UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 02, 2019, 12:00 a.m. through November 15, 2019, 11:59 p.m.

Number 2019-23
December 01, 2019

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 801-538-3003. 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

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

KFU440.A73S7
348.792'025--DDC 85-643197

TABLE OF CONTENTS

EDITOR'S NOTES

The Office of Administrative Rules has gone live with a new filing management and publication system. One piece of the old system, the creation of indexes, is not in the new system. Therefore, there are no longer indexes in this publication.

If the index was useful to you, please contact our office at rulesonline.utah.gov and we will explore alternatives.

End of the Editor's Notes Section

EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-Third Legislature Into the Fifth Extraordinary Session, Utah Proclamation No. 2019-5E

P R O C L A M A T I O N

WHEREAS, since the close of the 2019 General Session of the 63rd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 63rd Legislature of the State of Utah into the Fifth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 20th day of November 2019, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2019 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 18th day of November 2019.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2019/05/E

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 02, 2019, 12:00 a.m., and November 15, 2019, 11:59 p.m. are included in this, the December 01, 2019, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least December 31, 2019. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 30, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R156-1**	**Filing No. 52309**

Agency Information

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

General Information

2. Rule or section catchline:

General Rule of the Division of Occupational and Professional Licensing

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

The Division of Occupational and Professional Licensing (Division) proposes these amendments to carry out the mandates of new Section 58-1-601 enacted by H.B. 393, passed in the 2019 General Session.

4. Summary of the new rule or change:

Section R156-1-601 is a new section which establishes the Division's procedures for producing and providing access to the required suicide prevention videos. It also establishes the Division's standards for continuing competency requirements for the suicide prevent videos and for the suicide prevention educational materials or courses that will be provided on the Division's website. Section R156-1-602 is renumbered from Section R156-1-601. Section R156-1-603 is renumbered from R156-1-602.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division expects these proposed amendments to have no impact on the Division or other state agencies over and above the impact described in the fiscal note for HB 393 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0393.html, as they merely clarify the Division's collaboration and provisions to make suicide prevention videos available to primary care providers in accordance with the mandates of new Section 58-1-601. There will be a minimal cost to the Division of approximately $75 to disseminate this rule once the proposed amendments are made effective.

B) Local governments:

These proposed amendments are not expected to impact local governments as it will not affect local governments' practices or procedures.

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

These proposed amendments are not expected to impact small businesses as they merely establish and clarify the Division's procedures and standards for making the required suicide prevention educational materials, courses, and videos to primary care providers in accordance with H.B. 393 (2019).

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

These proposed amendments are not expected to impact non-small businesses as they merely establish and clarify the Division's procedures and standards for making the required suicide prevention educational materials, courses, and videos to primary care providers in accordance with H.B. 393 (2019).

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 approximately 17,573 licensed individuals (physicians, physician assistants, and nurse practitioners) who may, within their respective scope of practice, be primary care providers as defined in Section 58-1-601 and may be affected by these proposed amendments. No measurable fiscal impact beyond the impact described in the fiscal note for H.B. 393 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0393.html is expected.

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.)

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$75	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$75**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(75)**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The head of the Department of Commerce, Francine Giani, 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 an amendment to Rule R156-1 to clarify the procedures for a suicide prevention video series developed by the Division pursuant to the new statute Utah Code Section 58-1-601 enacted by H.B. 393 (2019). The redrafted Section R156-1-601 defines the Division's collaboration with the Department of Technology Services and the Division of Substance Abuse and Mental Health to provide continuing education suicide prevention videos to primary care providers on the Division's website. Renumbering to foregoing sections have been made to accommodate the new Section R156-1-601. Small Businesses (less than 50 employees): These proposed amendments will not be expected to impact small businesses. There are approximately 17,573 licensed individuals (physicians, physician assistants, and nurse practitioners) who may be primary care providers as defined in Utah Code Section 58-1-601 and may be affected by these proposed amendments. However, there is no measurable fiscal impact expected on these professionals and small businesses beyond the impact described in the fiscal note for H.B. 393 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0393.html. Non-Small Businesses (50 or more employees): These proposed amendments will not be expected to impact non-small businesses. There are approximately 17,573 licensed individuals (physicians, physician assistants, and nurse practitioners) who may be primary care providers as defined in Utah Code Section 58-1-601 and may be affected by these proposed amendments. However, there is no measurable fiscal impact expected on these professionals and non-small businesses beyond the impact described in the fiscal note for H.B. 393 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0393.html.

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

Francine A. Giani, 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)

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

B) A public hearing (optional) will be held:

On:	At:	At:
12/03/2019	10:00 AM	Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	**Date:**	11/04/2019

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-601. Suicide Prevention Video - Primary Care Providers.

(1)(a) In accordance with Subsection 58-1-601(3), the Division shall produce the suicide prevention videos described in Subsection 58-1-601(2) by meeting at least annually with the Division of Substance Abuse and Mental Health to review information on existing videos, and plan the creation of new videos including:

(i) establishing goals, specifications, and standards for the videos;

(ii) identifying approved vendors from Utah's Best Value Cooperative Contracts list or otherwise planning requests for proposals;

(iii) awarding contracts for creation of the videos; and

(iv) producing the videos and providing them in effective formats.

(b) The Division shall collaborate with the Department of Technology Services to allow primary care providers access to view the suicide prevention videos described in Subsection 58-1-601(2) on the Division's website, at no cost to the providers.

(c) A primary care provider may fulfill up to ten of their CPE hours by viewing the Division-created suicide prevention videos, as follows:

(i) for a video 25 minutes or less in length, a provider may recognize one-half CPE credit hour; and

(ii) for a video 26 minutes or longer, a provider may recognize CPE credit in 50-minute hour blocks of time.

(d) The Division's production of the suicide prevention videos may include posting Division-approved substitutes for the videos on its website, such as Counseling on Access to Lethal Means (CALM) training, or more robust in-person training CME hours from a Suicide Prevention Summit provided by the Department of Health.

(2)(a) Pursuant to Subsection 58-1-601(2)(b), the Division-approved educational materials or courses related to suicide prevention shall include all educational material or courses identified as such on the Division's website.

(b) The number and type of CPE credit hours allowed for completion of each specific educational material or course shall be stated on the Division's website or in the educational materials or course.

(3)(a) The Division or other provider of suicide prevention educational materials, courses, or videos may track or confirm a primary care provider's completion of the educational materials, course, or video.

(b) A primary care provider shall maintain adequate documentation as proof of compliance with Section 58-1-601 and this Section, for a period of four years after the end of the renewal cycle. At a minimum, the documentation shall include:

(i) title of the educational materials, course, or video;

(ii) date completed;

(iii) number of CE hours claimed; and

(iv) type of CE - i.e. real-time interactive distance learning, web-accessibly video, etc.

R156-1-[~~601~~]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:

(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/or 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; 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-[~~602~~]603. Telehealth - Scope of Telehealth Practice.

(1) 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 26-60-103 and Subsection 26-60-104(1), a provider offering telehealth services shall, prior to each patient encounter:

(a) verify the patient's identity and originating site;

(b) 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 patients 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);

(B) warning of potential risks to privacy notwithstanding the security measures;

(C) 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

(D) 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) In accordance with Subsection 26-60-103(1)(c), a provider offering telehealth services shall be available to the patient for subsequent care related to the initial telemedicine services, by:

(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;

(b) if the provider recommends that the patient needs to be seen in person, such as where 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) Nothing in this section shall prohibit electronic communications consistent with standards of practice applicable in traditional health care settings, including those:

(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 the provider has access to patient records;

(d) in broader practice models where 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 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: [~~November 8, 2018~~]2020
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.):	**R156-17b-309.7**	**Filing No. 52325**

Agency Information

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

General Information

2. Rule or section catchline:

Exemptions from Licensure - Opioid Treatment Program

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

In accordance with Section 58-17b-309.7, enacted by HB 398, passed in the 2019 General Session, after consultation with pharmacies, physicians, and practitioners who work in opioid treatment programs (OTPs) the Division of Occupational and Professional Licensing (Division) proposes this new Section R156-17b-309.7 to further define, clarify, and establish standards for practitioners dispensing methadone to patients in an OTP.

4. Summary of the new rule or change:

New Section R156-17b-309.7 defines "under the direction" of a pharmacist as used in Section 58-17b-309.7 to mean that the pharmacist has delegated to the practitioner the authority to perform one or more selected dispensing tasks on behalf of the pharmacist under the general supervision of the pharmacist, and specifically references that delegated tasks may include preparing, packaging, or labeling take-home dosages. This section also prohibits further delegation, or any expansion of the scope of a delegated task without the express permission of the pharmacist.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

New Section R156-17b-309.7 defines "under the direction" of a pharmacist as used in Section 58-17b-309.7 to mean that the pharmacist has delegated to the practitioner the authority to perform one or more selected dispensing tasks on behalf of the pharmacist under the general supervision of the pharmacist, and specifically references that delegated tasks may include preparing, packaging, or labeling take-home dosages. This section also prohibits further delegation, or any expansion of the scope of a delegated task without the express permission of the pharmacist. The Division anticipates a cost of approximately $75 to distribute the rule once this proposed amendment is made effective.

B) Local governments:

No cost or saving impact is expected for local governments because this new section will not affect any local governments' practices or procedures.

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

This proposed new section is expected to create a fiscal benefit for the approximately 100 small-business OTP facilities that employ pharmacists for dispensing (NAICS code 621420). However, the exact fiscal impact cannot be determined because the various employment and staffing characteristics and ratios for all of these OTPs, or what savings may result to an OTP from a pharmacist delegating one or more dispensing tasks to practitioners, is unknown and the relevant data is not available. The full fiscal impact on small businesses is inestimable as it will depend on the unique individual characteristics of the delegating pharmacists and the delegatee practitioners, on the characteristics of the patients involved, the nature of each OTP, and on the number and type of individual dispensing tasks that are delegated and the manner in which these tasks are completed.

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

This proposed new section is expected to create a fiscal benefit for the approximately seven non-small business OTP facilities that employ pharmacists for dispensing (NAICS code 621420). However, the exact fiscal impact cannot be determined because the various employment and staffing characteristics and ratios for these OTPs, as well as what savings may result to an OTP from a pharmacist delegating one or more dispensing tasks to practitioners, is unknown and the relevant data is not available. The full fiscal impact on these non-small businesses is inestimable as it will depend on the unique individual characteristics of the delegating pharmacists and the delegatee practitioners, on the characteristics of the patients involved, the nature of each OTP, and on the number and type of individual dispensing tasks that are delegated and the manner in which these tasks are completed.

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 approximately 3,890 licensed pharmacists in Utah that could potentially be impacted by this filing, as well as approximately 2,987 APRNs, 35,471 RNs, and 1,885 physician assistants. However, the filing is not expected to impact most of these persons because the new section is narrowly tailored to licensees who work in OTPs. Further, the full fiscal impact of the section on the persons working in OTPs is inestimable as any cost or savings will depend on the unique individual characteristics of the delegating pharmacist and the delegate practitioner, on the characteristics of the patient(s) involved, on the nature of the particular facility and OTP, and finally on the number and type of individual dispensing tasks that may be delegated and the manner in which these tasks must be completed. This relevant data is not available.

F) Compliance costs for affected persons:

No cost or saving impact is expected for affected persons above the impact described in the fiscal note for HB 398

(2019), available online at: https://le.utah.gov/~2019/bills/static/HB0398.html, as it merely clarifies the methadone dispensing procedures in accordance with the mandates of new Section 58-17b-309.7.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$75	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$75**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(75)**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

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

After consultation with pharmacies, physicians, and practitioners who work in OTPs that dispense methadone, the Division proposes the new Section R156-17b-309.7 pursuant to Section 58-17b-309.7 enacted by HB 398 (2019). The new Section R156-17b-309.7 defines the OTPs processes for being "under the direction" of a pharmacist relating to delegations to the practitioner of the authority to perform dispensing tasks on behalf of the pharmacist under the general supervision of the pharmacist. This section also prohibits further delegation, or any expansion of the scope of a delegated task without the express permission of the pharmacist. This section is narrowly tailored so that there will be a limited fiscal impact to licensed pharmacists, APRNs, RNs, and physician assistants. Small Businesses: This proposed section has the potential to impact the approximately 100 small-business OTP facilities that employ pharmacists for dispensing (NAICS code 621420). However, the exact fiscal impact cannot be determined because the characteristics for these OTPs are unknown and the relevant data is not available. The full fiscal impact on small businesses is inestimable as it will depend on the individual characteristics of the delegating pharmacists and the delegatee practitioners, on the characteristics of the patients involved, the nature of each OTP, and on the number and type of individual dispensing tasks that are delegated and the manner in which these tasks are completed. Non-Small Businesses: This proposed new section has the potential to affect approximately seven non-small business OTP facilities that employ pharmacists for dispensing (NAICS code 621420). However, the proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses for the same reasons as described above for small business. These costs are either inestimable, for the reasons stated, or there is no fiscal impact.

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

Francine A. Giani, 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 58-17b-101	Subsection 58-17b-601(1)	Section 58-37-1
Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:	12/31/2019	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
12/03/2019	11:00 AM	Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/07/2020
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	**Date:**	11/14/2019

R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.
R156-17b-309.7. Exemptions from Licensure - Opioid Treatment Program.

(1) In accordance with Section 58-17-b-309.7 "under the direction of a pharmacist" means that the pharmacist has delegated to a licensed practitioner the authority to perform one or more selected dispensing tasks on behalf of the pharmacist:

(a) in accordance with all state and federal laws and rules; and

(b) under the general supervision of the pharmacist as defined in Subsection R156-1-102a(4)(c).

(2) Dispensing tasks that may be delegated include preparing, packaging, or labeling take-home dosages and medications for subsequent use.

(3) A delegating pharmacist retains accountability for the appropriate delegation of tasks and for the pharmaceutical care of the patient.

(4) A practitioner may not:

(a) further delegate to another person any task delegated to the practitioner by the pharmacist; or

(b) expand the scope of a delegated task without the express permission of the pharmacist.

KEY: pharmacists, licensing, pharmacies
Date of Enactment or Last Substantive Amendment: [~~December 27, 2018~~]2020
Notice of Continuation: September 5, 2019
Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R156-55b**	**Filing No. 52310**

Agency Information

1. Agency:	Commerce/Division of Occupational and Professional Licensing		
Building:	Heber M. Wells Building		
Street address:	160 East 300 South		
City, state:	Salt Lake City UT 84111-2316		
Mailing address:	PO Box 146741		
City, state, zip:	Salt Lake City UT 84114-6741		
Contact person(s):			
Name:	**Phone:**	**Email:**	
Steve Duncombe	801-530-6235	sduncombe@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
Electricians Licensing Act Rule
3. Purpose of the new rule or reason for the change:
In response to 2019 H.B. 187 and H.B. 226, this filing is recommended by the Electricians Licensing Board (Board) and the Construction Services Commission (Commission) to clarify current requirements, conform the rule to current practices in the industry, and remove certain requirements that the Board and the Commission have found to be outdated and unnecessarily arduous.
4. Summary of the new rule or change:
In Section R156-55b-102, the amendments to Subsection R156-55b-102(1) clarify the definition of "electrical work", including a nonsubstantive change to update the citation to Section 58-55-102 and clarifying the description of what is not considered electrical work to reflect current practice and industry standards. The amendments to Subsection R156-55b-102(2) are formatting changes for clarity. The amendments to Subsection R156-55b-102(3) clarify that the definition of "minor electrical work" includes HVAC equipment, and that wiring may extend no more than ten feet from an existing outlet or disconnect intended specifically for the piece of equipment, appliance, or machinery. New Subsection R156-55b-102(4) clarifies that "Premises Wiring" means the same as defined in Title 15A, State Construction and Fire Codes Act. The amendments to Subsection R156-55b-102(7) (formerly Subsection R156-55b-102(6)) simplify

and update the definition of "work commonly done by unskilled labor" by deleting references to specific tasks and substituting in their place a reference to work performed by "unlicensed persons". In Section R156-55b-302a, the amendments to this section make nonsubstantive formatting changes to clarify all of the current education and experience requirements for the respective license classifications. This includes describing in Subsection R156-55b-302a(5) the programs approved by the Electricians Licensing Board prior to January 1, 2009. In Section R156-55b-302b, the amendments to this section: 1) make nonsubstantive formatting changes to clarify the current examination requirements for the respective license classifications; 2) extend the 25-day waiting period after a failed exam to a 30-day waiting period, to alleviate confusion and create parity among the standards for all contractor professions; and 3) delete the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), as this restriction was deemed unnecessary and onerous. Section R156-55b-302c is a new section that creates opportunities for expedited licensure, and appropriate placement of apprentice electricians seeking education in an approved program. Section R156-355b-303 is a new section that requires all licensees to renew their license in an online form approved by the Division of Occupational and Professional Licensing (Division), except as permitted by the Division in writing. In Section R156-55b-304, the amendments to this section make formatting changes for clarity, including streamlining the rule by removing duplicative continuing education requirements that are already stated in Section R156-55a-303b. In Section R156-55b-401, the amendments to Subsection R156-55b-401(1) clarify that an electrical contractor may contract with licensed professional employer organizations to employ one or more licensed electricians. The amendments to Subsection R156-55b-401(2) clarify the number of apprentice electricians a licensed supervisor may have on non-residential and residential projects. In Section R156-55b-501, the amendments to this section update the definition of "unprofessional conduct" to reflect a new standard being implemented across all construction trades professions - instead of the licensee being required to carry a copy of their current license at all times, the licensee must provide the license or license number upon request. These amendments also delete as "unprofessional conduct" "failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee" as this is a conduct specific to a contractor and will be included as unprofessional conduct in Section R156-55a-501.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Most of these proposed changes update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity. Accordingly, none of these amendments will impact state government revenues or expenditures. The amendments to Section R156-55b-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are not expected to impact existing state practices or procedures, and will therefore have no impact on state government revenues or expenditures. The amendments to Section R156-55b-302b that delete the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement) are not expected to impact state government practices or procedures, as the examinee may still take each exam up to five times per year. The changes will therefore have no impact on state government revenues or expenditures. New Section R156-55b-302c that creates opportunities for expedited licensure, and appropriate placement of apprentice electricians seeking education in an approved program is not expected to impact existing state practices or procedures, and will therefore have no impact on state government revenues or expenditures. No other fiscal impact to the state is expected, beyond a minimal cost to the Division of approximately $75 to print and distribute the Electricians Licensing Act Rule once these amendments are made effective.

B) Local governments:

These proposed amendments are not expected to change existing local governments' practices or procedures, and will therefore have no impact on local governments' revenues or expenditures.

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

The proposed changes that update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity, are not expected to impact small businesses as they will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55b-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact small businesses as the examinee may still take each exam the same amount of times per year. The amendment to Section R156-55b-302b deleting the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55b-302c that creates expedited licensure requirements, are expected to create a significant fiscal benefit for the estimated 879 small businesses that may be impacted in the electrical industry (NAICS 238212 and 238211).

First, per the changes to R156-55b-302b, all applicants for licensure may seek licensure as soon as they have passed all of their exams, regardless of when they passed their exams. Currently, many applicants need to retake exams they have already passed because the

date they took the exam is outside of the one-year "rolling clock" period. The applicants therefore experience a delay of weeks to months to even years in the ability to obtain their license. Other applicants, in particular apprentice electrician applicants who would like to achieve journeyman electrician status, often give up and never seek to increase their level of licensure because of the perceived difficulty and cost associated with trying to timely pass all of their electrician exams.

Second, new Section R156-55b-302c that creates an expedited licensure pathway for applicants seeking licensure as a journeyman electrician or residential journeyman electrician, will give these individuals the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, these individuals may obtain a residential journeyman license after one and a half years, reducing their time-based experience requirement by as much as six months. Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Small businesses will therefore be able to more easily hire journeyman electricians, residential journeyman electricians, master electricians, and residential master electricians. Additionally, newly licensed master electricians may be able to create their own small businesses or serve as qualifiers for other small businesses. However, the full impact of these expected significant fiscal benefits to small businesses cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive.

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

There are 26 non-small businesses in Utah in the electrical contracting industry in question (NAICS 238211, and NAICS 238212). The proposed changes that update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity, are not expected to impact these non-small businesses as they will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55b-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact these non-small businesses as examinees may still take each exam the same amount of times per year. The amendment to Section R156-55b-302b deleting the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55b-302c creating expedited licensure requirements are expected to create a fiscal benefit for such non-small businesses.

First, per the changes to R156-55b-302b all applicants for licensure may seek licensure as soon as they have passed all of their exams, regardless of when they passed their exams. Currently, many applicants need to retake exams they have already passed because the date they took the exam is outside of the one-year "rolling clock" period. The applicants therefore experience a delay of weeks to months to even years in the ability to obtain their license. Other applicants, in particular apprentice electrician applicants who would like to achieve journeyman electrician status, often give up and never seek to increase their level of licensure because of the perceived difficulty and cost associated with trying to timely pass all of their electrician exams.

Second, new Section R156-55b-302c, that creates an expedited licensure pathway for applicants seeking licensure as a journeyman electrician or residential journeyman electrician, will give these individuals the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, these individuals may obtain a residential journeyman license after one and a half years, reducing their time-based experience requirement by as much as six months. Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Non-small businesses will therefore be able to more easily hire journeyman electricians, residential journeyman electricians, master electricians, and residential master electricians. Additionally, newly licensed master electricians may be able to create their own non-small businesses or serve as qualifiers for other non-small businesses. However, the full impact of these expected significant fiscal benefits to non-small business cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each non-small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive. Finally, because the Division estimates approximately 12 individual apprentices per year will experience a one-time savings of approximately $1,500 from a reduction in their cost of tuition and materials to attend an approved apprenticeship program, the Division expects that there may be a corresponding loss to non-small businesses conducting approved apprenticeship programs.

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 persons that may potentially be affected by these amendments will be Utah licensed master electricians, residential master electricians, journeyman electricians,

residential journeyman electricians, and apprentice electricians engaged in electrical work, and applicants from other jurisdictions who wish to become licensed as residential journeyman electricians or higher in Utah. The proposed changes that update definitions and ensure that this rule encompasses current requirements and practices in the profession, and that make formatting changes for clarity are not expected to impact these other persons as these changes will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55b-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact these persons as any examinee may still take each exam the same amount of times per year. The amendment to Section R156-55b-302b which deletes the requirement that an applicant pass all licensing exams within a one-year period (the one-year "rolling clock" requirement) will create a fiscal benefit for many of these other persons if it results in their becoming licensed at a higher level, and/or eliminates the cost to them of retaking licensing exams that they have already passed, and reduces a delay in their becoming licensed at a higher level. However, the full impact cannot be estimated because it will depend on the unique licensing and employment choices made by each individual person and this relevant data is unavailable. New Section R156-55b-302c that creates an expedited licensure pathway will apply to apprentice electricians, and to other applicants seeking licensure as a journeyman electrician or residential journeyman electrician. These individuals will now have the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, an individual may obtain a residential journeyman license after one and a half years, thereby reducing their time-based experience requirement by as much as six months. Although the full impact from new Section R156-55b-302c will depend on the unique licensing and employment choices made by each individual person, the Division estimates that approximately 12 individuals per year may be able to proceed more quickly towards licensure using the new expedited licensure pathway. This will result in significant fiscal benefits for such persons. For example, without any formal training or education, an individual seeking employment with an electrical contractor in the designated starting position of "apprentice" can expect a wage of $11 to $21 an hour, whereas an experienced employee who holds the position of "journeyman" can expect a much higher hourly wage ranging from $25 to $35 for residential and non-residential work. Accordingly, the Division estimates that an apprentice electrician who is able to obtain licensure as a journeyman by means of expedited licensure could experience, on average, a potential earnings increase of $9.75 per hour, or approximately $19,500 per year, over a four year period.

Second, the Division expects an individual apprentice may experience a one-time savings of approximately $1,500 resulting from a reduction in their cost of tuition and materials to attend an approved apprenticeship program. The average cost of tuition and materials to attend a program is approximately $520 per semester, equating to $4,160 for the four years (eight semesters) of required education. By completing the education in two and a half years, potentially avoiding the cost of tuition and materials for the additional one and a half years, an individual apprentice could see, in theory, a one-time savings of these costs.

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 because the amendments will result in no fiscal impact or in a fiscal benefit.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$75	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$18,000	$18,000	$18,000
Other Person	$0	$0	$0
Total Fiscal Costs:	**$18,075**	**$18,000**	**$18,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$252,000	$252,000	$252,000
Total Fiscal Benefits:	**$252,000**	**$252,000**	**$252,000**
Net Fiscal Benefits:	**$233,925**	**$234,000**	**$234,000**

H) Department head sign-off on regulatory impact:

The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

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

By recommendation from the Electricians Licensing Board and the Construction Service Commission, in response to 2019 H.B.187 and H.B. 226, the Division proposes these amendments to clarify this rule and conform it to current practices in the industry that have been found to be outdated and needlessly onerous by the Board and Commission. The changes to Sections R156-55b-102, R156-55b-302a, R156-55b-304, R156-55b-401, R156-55b-501 are nonsubstantive amendments to add clarity to definitions, remove the needless "rolling clock" for completing requirements for licensure, or streamlining the rule by removing redundancies accomplished in other rules. The new Sections, R156-55b-302c and R156-55b-303, are added to accommodate expedited licensure as well as online form requirements. In essence, these rule amendments clarify and update requirements for licensure as an electrician in the state of Utah. Small Businesses (less than 50 employees): The proposed changes are an update for definitions in the practices of the profession and make formatting changes for clarity. These changes are not expected to impact small businesses. The amendments to Section R156-55b-302b extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact small businesses as the examinee may still take each exam the same amount of times per year. The amendment to Section R156-55b-302b that deletes the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55b-302c that creates expedited licensure requirements, are expected to create a significant fiscal benefit for the estimated 879 small businesses that may be impacted in the electrical industry (NAICS 238212 and 238211). Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Small businesses will therefore be able to more easily hire journeyman electricians, residential journeyman electricians, master electricians, and residential master electricians. Additionally, newly licensed master electricians may be able to create their own small businesses or serve as qualifiers for other small businesses. However, the full impact of these expected significant fiscal benefits to small businesses cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive. Regulatory Impact to Non-Small Businesses (50 or more employees): There are 26 non-small businesses in Utah in the electrical contracting industry in question (NAICS 238211, and NAICS 238212). These proposed changes update definitions and ensure that the rule encompasses current requirements in the profession and make formatting changes for clarity, are not expected to impact non-small businesses. The proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses for the same reasons as described above for small businesses. These costs are either inestimable, for the reasons stated, or there is no fiscal impact.

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

Francine A. Giani, 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)	Subsection 58-1-202(1)(a)	Subsection 58-55-308(1)

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
12/18/2019	9:00 AM	Heber Wells Bldg, 160 E 300 S, North Conference Room (first floor), Salt Lake City, UT

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	**Date:**	11/04/2019

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.
R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1)(a) "Electrical work" as used in Subsection 58-55-102(14)(a) and in this rule means:

(i) installation, fabrication or assembly of equipment or systems included in [~~"~~]Premises Wiring[~~" as defined by Title 15A, State Construction and Fire Codes Act.~~];

(ii) [~~Electrical work includes~~]installation of raceway systems used for any electrical purpose[~~,~~]; and

(iii) installation of field-assembled systems such as ice and snow melting, pipe-tracing, or manufactured wiring systems[~~, and the like~~].

(b) "Electrical work" does not include:

(i) installation of factory-assembled appliances or machinery that are not part of the [~~p~~]Premises [~~w~~]Wiring, unless wiring interconnections external to the equipment are required in the field[~~, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined by Title 15A, State Construction and Fire Codes Act. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements~~].

(2) "Immediate supervision" as used in Subsection 58-55-102(26) and this rule means[~~ the following~~]:

(a) for [~~industrial and commercial~~]non-residential electrical work, the apprentice and the supervising electrician are physically present on the same project or jobsite, but [~~are~~]not required maintain a direct line of[~~to be within~~] sight[~~ of one another~~]; and

(b) for residential electrical work, the supervising electrician, when not physically present on the same project or jobsite as the apprentice, is available to provide [~~reasonable~~]direction, oversight, inspection, and evaluation of the apprentice's work [~~of an apprentice~~]so as to ensure that the end result complies with applicable standards.

(3)(a) "Minor electrical work incidental to a mechanical or service installation", as used in Subsection 58-55-305(1)(n), means the electrical work involved in installation, replacement, or repair of HVAC equipment, appliances, or machinery that [~~utilize~~]use electrical power, when wiring is extended no more than ten feet from an existing outlet or disconnect intended specifically for the piece of equipment, appliance, or machinery.

(b) Minor electrical work does not include:

(i) modification or repair of [~~"~~]Premises Wiring[~~" as defined in the National Electrical Code, and does not include~~]; or

(ii) installation of a disconnecting means or outlet.[~~Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.~~]

(4) "Premises Wiring" means the same as defined in Title 15A, State Construction and Fire Codes Act.

([4]5) "Residential project" as used in Subsection 58-55-302(3)(j)([~~ii~~]iv) [~~pertains~~]pertaining to supervision, [~~and~~]means electrical work performed in a one- or two-family dwelling[~~s~~], including townhouses, as determined by Title 15A, State Construction and Fire Codes Act.

([~~5~~]6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

([~~6~~]7) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(14)(b)(iii) means work performed by unlicensed persons and includes assisting or handling[~~such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle~~] wire on large wire pulls involving conduit of two inches or larger, [~~or assist in moving heavy electrical equipment~~]when the task is performed under[~~in~~] the immediate [~~presence of and supervised~~]supervision of a [~~by~~]properly licensed master, or journeyman[~~, residential master or residential journeyman~~] electrician[~~s~~] acting within the scope of their license[~~s~~].

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

[~~(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:~~

~~(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and~~

~~(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.~~

~~(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:~~

~~(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and~~

~~(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.~~

~~(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.~~

~~(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.~~

~~(5) The applicant shall pass each class with a minimum score of 75%.~~

~~(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.~~

~~(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).~~

~~(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.~~]

The education and experience requirements for licensure in Subsection 58-55-302(3) are defined, clarified, or established as follows:

(1) Master Electrician:

(a) An applicant under Subsection 58-55-302(3)(f)(i) shall:

(i) hold a bachelor's or master's degree in electrical engineering from an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET); and

(ii) have at least 2,000 hours of work experience as a licensed Apprentice Electrician.

(b) An applicant under Subsection 58-55-302(3)(f)(ii) shall:

(i) hold an associate's degree in applied science from an electrical trade school course of study that meets the requirements of Subsection (5); and

(ii) have at least 4,000 hours of work experience as a licensed Journeyman Electrician.

(c) An applicant under Subsection 58-55-302(3)(f)(iii) shall have at least 8,000 hours of work experience as a licensed Journeyman Electrician.

(2) Residential Master Electrician:

(a) An applicant under Subsection 58-55-302(3)(g)(i) shall have at least 4,000 hours of work experience as a licensed Residential Journeyman Electrician.

(b) An applicant under Subsection 58-55-302(3)(g)(ii) shall:

(i) hold a bachelor's or master's degree in electrical engineering from an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET); and

(ii) have at least 2,000 hours of work experience as a licensed Apprentice Electrician.

(3) Journeyman Electrician:

(a) An applicant under Subsection 58-55-302(3)(h)(i) shall:

(i) have completed at least 576 hours (four years, 144 hours per year) of a program of electrical study that meets the requirements of Subsection (5); and

(ii) have at least 8,000 hours of full-time work experience as a licensed Apprentice Electrician.

(b) An applicant under Subsection 58-55-302(3)(h)(ii) shall have at least 16,000 hours of full-time work experience as a licensed Apprentice Electrician.

(4) Residential Journeyman Electrician:

(a) An applicant under Subsection 58-55-302(3)(i)(i) shall:

(i) have completed at least 288 hours (two years, 144 hours per year) of a program of electrical study that meets the requirements of Subsection (5); and

(ii) have at least 4,000 hours of full-time work experience as a licensed Apprentice Electrician.

(b) An applicant under Subsection 58-55-302(3)(i)(ii) shall have at least 8,000 hours of full-time work experience as a licensed Apprentice Electrician.

(5) In accordance with Subsections 58-55-302(3)(f), (h), and (i), an electrical trade school "course of study" and the planned electrical "training program" approved by the Division, mean a program of electrical study that includes measures of competency and achievement level for each student and:

(a) is approved by the:

(i) Utah Board of Regents;

(ii) Utah System of Technical Colleges Board of Trustees; or

(iii) Electricians Licensing Board, when the program is out-of-state and includes at least 81 hours of classroom instruction per semester.

(b) Programs approved by the Electricians Licensing Board include the:

(i) Independent Electrical Contractors of Utah ("IEC"); and

(ii) Utah Electrical Training Alliance ("IBEW Local 354").

(6) "Completion" of a training program of electrical study means that the applicant:

(a) attended a minimum of 72 classroom instruction hours each semester; and

(b) passed each class with a score of at least 75%.

(7) On the job training and instruction shall include measurements of the apprentice's performance in the electrical trade.

(8) No more than 3,000 hours of work experience may be credited for each 12 month period.

(9) As used in Subsection 58-55-302(3) and this rule, "practical electrical experience", "practical experience", "full-time training", and "full-time experience" all mean electrical work experience lawfully performed preceding the date of application.

[

~~R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.~~

~~(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on the job work experience:~~

~~(a) Residential Journeyman Electrician:~~

~~(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;~~

~~(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;~~

~~(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and~~

~~(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.~~

~~(b) Journeyman electrician:~~

~~(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;~~

~~(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;~~

~~(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and~~

~~(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.~~

~~(2) No more than 2000 hours of work experience may be credited for each 12 month period.~~

~~(3) No credit will be given for work experience performed illegally.~~]

R156-55b-302[e]b. Qualifications for Licensure - Examination Requirements.

[~~(1) -~~]In accordance with Subsection 58-55-302(1)(c)(i), [~~an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows~~]the exam requirements for licensure are established as follows:

([~~a~~]1) [~~Utah Electrical Licensing Examination for~~]Master Electrician[~~s~~] applicants shall pass:

(a) the Utah Master Electrician Code Exam;

(b) the Utah Master Electrician Theory Exam; and

(c) the Utah Electrician Practical Exam.[~~;~~]

([~~b~~]2) [~~Utah Electrical Licensing Examination for Master~~]Residential Master Electrician[~~s~~] applicants shall pass:

(a) the Utah Residential Master Electrician Code Exam;

(b) the Utah Residential Master Electrician Theory Exam; and

(c) the Utah Residential Electrician Practical Exam.[~~;~~]

([~~c~~]3) [~~Utah Electrical Licensing Examination for~~]Journeyman Electrician[~~s~~] applicant shall pass:[~~; and~~]

(a) the Utah Journeyman Electrician Code Exam;

(b) the Utah Journeyman Electrician Theory Exam; and

(c) the Utah Electrician Practical Exam.

([~~d~~]4) [~~Utah Electrical Licensing Examination for~~]Residential Journeyman Electrician[~~s.~~] applicants shall pass:

(a) the Utah Residential Journeyman Electrician Code Exam;

(b) the Utah Residential Journeyman Electrician Theory Exam; and

(c) the Utah Residential Electrician Practical Exam.

([~~2~~]5) Admission to the [~~examinations~~]exams is permitted after:

(a) the applicant has completed all requirements for licensure [~~set forth -~~]in Section[s] R156-55b-302a[~~ and R156-55b-302b~~]; or

(b) the journeyman applicant, under Subsection R156-55b-302a(3)(a) has completed:

(i) the [~~apprentice education -~~]program of electrical study[~~set forth in Subsection R156-55b-302a~~]; and

(ii) [~~not less than~~]at least 3,000 hours of the required full-time work experience[~~ required under Subsection R156-55b-302b~~].

([~~3~~]6) [~~The~~]An applicant shall obtain:

(a) a "pass" grade on the Practical Exam;[~~practical part of the examination;~~]

(b) a score of at least 75% on the Theory Exam; [~~theory part -~~]and

(c) a score of at least 75% on the Code Exam[~~code part of the examination~~].

[~~(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.~~

~~(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.~~

~~(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.~~]

(7) An applicant who fails an exam may retake that exam:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than 120 days following any failure thereafter.

R156-55b-302c. Qualifications - Expedited Licensure.

In accordance with Subsection 58-1-203(2) and 58-1-301(3), the requirements for expedited licensure pursuant to Subsections 58-55-302(3)(h)(iii) and 58-55-302(3)(i)(iii) are as follows:

(1) A licensed apprentice electrician may take the approved competency exams, in sequence beginning with 1A and continuing through 4B, to either satisfy the education requirement, or determine placement in a planned program of training approved by the Division.

(2) Division pre-approval is not required to sit for any competency exam.

(3) An applicant shall register directly with the Division's approved exam provider to sit for a competency exam.

(4) An applicant may attempt each competency exam one time.

(5) Admission to the subsequent competency exam is permitted after obtaining a minimum score of 75%.

(6) Placement in a planned program of training is determined when the applicant scores below 75% on the corresponding competency exam.

(7) Upon completion of all qualifying competency exams, the applicant may sit for the Utah journeyman or residential journeyman electrician exams.

R156-55b-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 55 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) Pursuant to Subsection 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee shall comply with the continuing education requirements in Section R156-55b-304.

(4) All licensees shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55b-304. Continuing Education - Standards.

Standards for continuing education shall be in accordance with Subsections R156-55a-303b(1)(e) and (2) through (10), except as otherwise provided in this section.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete at least 16 hours of continuing education during each two-[~~–~~]year license term. [~~A minimum of~~]At least 12 hours shall be core education. The remaining four hours may be professional or core education.

(2) "Core continuing education" is defined as eight hours of education covering the National Electrical Code as adopted or proposed for adoption, and four hours of education covering the National Fire Protection Association 70E (NFPA 70E).

(3) "Professional continuing education" is defined as education covering:

(a) [~~National Fire Protection Association 70E (NFPA 70E), ~~]Occupational Safety and Health Administration (OSHA), or Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls[~~,~~];

(c) electrical tool usage; [~~and~~]or

([~~e~~]d) supervision skills related to the electrical trade.

[~~(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:~~

~~(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;~~

~~(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;~~

~~(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and~~

~~(d) meetings held in conjunction with the general business of the licensee or employer.~~]

([~~5~~]4) The Division may defer or waive continuing education requirements for:

(a) [~~waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program~~]an instructor of a program of electrical study under Subsection R156-55b-302a(5);[~~ or~~]

(b) a board member who regularly attends the Electricians Licensing Board meetings; or

(c) [~~waive or defer the continuing education requirements~~] any licensee as provided in Section R156-1-308d.

[~~(6) A continuing education course shall meet the following standards:~~

~~(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.~~]

([~~b~~]5) Provider. [~~The~~]A course provider need not be listed in Subsection 58-55-302.5(2), but shall meet the other requirements of this section and [~~shall~~]be[~~ one of the following~~]:

([~~i~~]a) a recognized accredited college or university;

([~~ii~~]b) a state or federal agency;

([~~iii~~]c) a professional association or organization involved in the construction trades; or

([~~iv~~]d) a commercial continuing education provider providing a program related to the electrical trade.

([e]6) Content. Course[~~The~~] content [~~of the course~~]shall be relevant to the practice of the electrical trade and consistent with [~~the~~]Utah laws and rules[~~ of this state~~].

[~~(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.~~

~~(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.~~

~~(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.~~

~~(g) Distance learning. A course may be recognized for continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.~~

~~(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:~~

~~(i) the date of the course;~~

~~(ii) the name of the course provider;~~

~~(iii) the name of the instructor;~~

~~(iv) the course title;~~

~~(v) the hours of continuing education credit;~~

~~(vi) the attendee's name;~~

~~(vii) the attendee's license number; and~~

~~(viii) the signature of the course provider.~~

~~(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.~~

~~(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.~~

~~(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.~~

~~(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.~~

~~(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.~~

~~(12) Continuing Education Registry.~~
~~(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.~~
~~(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:~~
~~(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;~~
~~(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;~~
~~(iii) maintain accurate records of qualified continuing education approved;~~
~~(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and~~
~~(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.~~
~~(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.~~]

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

[~~(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with~~]The requirements of Subsections 58-55-102(34) and 58-55-302(3)(j) are clarified and established as follows:[~~, Sections 58-55-501, 58-55-502, and R156-55b-501.~~]

[~~(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:~~
~~(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;~~
~~(b) the~~](1) An electrical contractor may comply with supervision requirements by contracting[~~contract~~] with a licensed professional employer organization to employ one or more licensed electricians[~~such persons~~].

[~~(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).~~]

(2) A licensed supervisor may have up to:
(a) two licensed apprentice electricians on a non-residential project; or
(b) three licensed apprentice electricians on a residential project.

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:
(1) failing [~~as a licensee~~]to comply with the supervision requirements established by Subsection 58-55-302(3)(j)[~~.~~];
(2) failing [~~as a licensee to carry a copy of a~~]to timely provide upon request, the licensee's current electrician license or license number[~~at all times~~] when performing electrical work;
(3) [~~failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and~~
~~(4)~~]failing [~~as a licensee~~]to provide proof of completed continuing education within 30 days of the Division's request; or
(4) failing to be knowledgeable of the electrician licensing laws and rules.

KEY: occupational licensing, licensing, contractors, electricians
Date of Enactment or Last Substantive Amendment: [~~March 27, 2017~~]2020
Notice of Continuation: August 8, 2016
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-308(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R156-55c**	**Filing No. 52311**

Agency Information

1. Agency:	Commerce/Division of Occupational and Professional Licensing
Building:	Heber M. Wells Building
Street address:	160 East 300 South
City, state:	Salt Lake City UT 84111-2316
Mailing address:	PO Box 146741
City, state, zip:	Salt Lake City, UT 84114-6741
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Duncombe	801-530-6235	sduncombe@utah.gov

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

General Information

2. Rule or section catchline:

Plumber Licensing Act Rule

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

In response to HB 187 and HB 226, passed in the 2019 General Session, this filing is recommended by the Plumbers Licensing Board (Board) and the Construction Services Commission (Commission) to clarify current requirements, conform this rule to current practices in the industry, and remove certain requirements that the Board and Commission have found to be outdated and unnecessarily arduous.

4. Summary of the new rule or change:

In Section R156-55c-102, the amendments to Subsection R156-55c-102(1) clarify the definition of "Immediate supervision" for non-residential plumbing work, and require the supervising plumber on residential projects to provide direction, oversight, inspection, and evaluation of

the apprentice's work when not physically present. In Section R156-55c-302a, the amendments make nonsubstantive formatting changes to clarify all of the current education and experience requirements for the respective license classifications. Amendments to this section also include the removal of the minimum hour requirements for work process previously required and referred to in Tables I and II. In Section R156-55c-302b, the amendments to this section: 1) make nonsubstantive formatting changes to clarify the current examination requirements for the respective license classifications; 2) extend the 25-day waiting period after a failed exam to a 30-day waiting period, to alleviate confusion and create parity among the standards for all contractor professions; and 3) delete the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), as this restriction was deemed unnecessary and onerous. Section R156-55c-302c is a new section creates opportunities for expedited licensure and the appropriate placement of apprentice plumbers seeking education in an approved program. Section R156-55c-303 is a new section requires all licensees to renew their license in an online form approved by the Division of Occupational and Professional Licensing (Division), except as permitted by the Division in writing. In Section R156-55c-304, the amendments make formatting changes for clarity, including streamlining the rule by removing duplicative continuing education requirements that are already stated in Section R156-55a-303b. In Section R156-55c-401, the amendments to Subsection R156-55c-401(1) clarify that a plumbing contractor may contract with licensed professional employer organizations to employ one or more licensed plumbers and Subsection R156-55c-401(2) clarifies the number of apprentice plumbers a supervisor may have on non-residential and residential projects. In Section R156-55c-501, the amendments update the definition of "unprofessional conduct" to reflect a new standard being implemented across all construction trades professions - instead of the licensee being required to carry a copy of their current license at all times, the licensee must provide the license or license number upon request. These amendments also delete as "unprofessional conduct" "failing as a plumbing contractor to certify a plumber's hours and breakdown of work experience by category when requested by a plumber who is or has been an employee" as this is a conduct specific to a contractor and will be included as unprofessional conduct in Section R156-55a-501.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Most of these proposed changes update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity. Accordingly, none of these amendments will impact state government revenues or expenditures. The amendments to Section R156-55c-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are not expected to impact existing state practices or procedures and will therefore have no impact on state government revenues or expenditures. The amendments to Section R156-55c-302b that delete the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), are not expected to impact state government revenues or expenditures as the examinee may still take each exam up to five times per year, and the changes will have no impact on state practices or procedures. No other fiscal impact to the state is expected, beyond a minimal cost to the Division of approximately $75 to print and distribute the Plumbers Licensing Act Rule once the amendments are made effective.

B) Local governments:

The proposed amendments are not expected to change existing local government practices or procedures, and will therefore have no impact on local governments' revenues or expenditures.

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

The proposed changes that update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity, are not expected to impact small businesses as they will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55c-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact small businesses as the examinee may still take each exam the same amount of times per year. The amendment to Section R156-55c-302b that deletes the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the creation of Section R156-55c-302c are expected to create a fiscal benefit for the estimated 1,139 small businesses that may be impacted in the plumbing industry (NAICS 238221 and 238222).

First, per the changes to Section R156-55c-302b, all applicants for licensure may seek licensure as soon as they have passed all of their exams, regardless of when they passed their exams. Currently, many applicants need to retake exams they have already passed because the date they took the exam is outside of the one-year "rolling clock" period. The applicants therefore experience a delay of weeks to months to even years in the ability to obtain their license. Other applicants, in particular apprentice plumber applicants who would like to achieve journeyman plumber status, often give up and never seek to increase their level of licensure because of the perceived difficulty and cost associated with trying to timely pass all of their plumber exams.

Second, the new Section R156-55c-302c that creates an expedited licensure pathway for applicants seeking licensure as a journeyman plumber or residential journeyman plumber, will give these individuals the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, these individuals may obtain a residential journeyman license after one and a half years, reducing their time-based experience requirement by as much as six months. Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Small businesses will therefore be able to more easily hire journeyman plumbers, residential journeyman plumbers, master plumbers, and residential master plumbers. Additionally, newly licensed master plumbers may be able to create their own small businesses or serve as qualifiers for other small businesses. However, the full impact of these expected significant fiscal benefits to small businesses cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive.

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

There are 42 non-small businesses in Utah in the plumbing contractor industry in question (NAICS 238221, and NAICS 238222). These proposed changes update definitions and ensure that this rule encompasses current requirements and practices in the profession, and make formatting changes for clarity, are not expected to impact these non-small businesses as they will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55c-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact non-small businesses as examinees may still take each exam the same amount of times per year. The amendment to Section R156-55c-302b that deletes the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55c-302c that creates expedited licensure requirements are expected to create a fiscal benefit for such non-small businesses.

First, per the changes to Section R156-55c-302b all applicants for licensure may seek licensure as soon as they have passed all of their exams, regardless of when they passed their exams. Currently, many applicants need to retake exams they have already passed because the date they took the exam is outside of the one-year "rolling clock" period. The applicants therefore experience a delay of weeks to months to even years in the ability to obtain their license. Other applicants, in particular apprentice plumber applicants who would like to achieve journeyman plumber status, often give up and never seek to increase their level of licensure because of the perceived difficulty and cost associated with trying to timely pass all of their plumber exams.

Second, the new Section R156-55c-302c that creates an expedited licensure pathway for applicants seeking licensure as a journeyman plumber or residential journeyman plumber, will give these individuals the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, these individuals may obtain a residential journeyman license after one and a half years, reducing their time-based experience requirement by as much as six months. Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Non-small businesses will therefore be able to more easily hire journeyman plumbers, residential journeyman plumbers, master plumbers, and residential master plumbers. Additionally, newly licensed master plumbers may be able to create their own non-small businesses or serve as qualifiers for other non-small businesses. However, the full impact of these expected significant fiscal benefits to non-small businesses cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each non-small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive.

Finally, because the Division estimates approximately four individual apprentices per year will experience a one-time savings of approximately $1,500 from a reduction in their cost of tuition and materials to attend an approved apprenticeship program, the Division expects that there may be a corresponding loss to non-small businesses conducting approved apprenticeship programs.

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 persons that may potentially be affected by these amendments will be Utah licensed master plumbers, residential master plumbers, journeyman plumbers, residential journeyman plumbers, and apprentice plumbers engaged in plumbing work, and applicants from other jurisdictions who wish to become licensed as residential journeyman plumbers or higher in Utah. The proposed changes that update definitions and ensure that this rule encompasses current requirements and practices in the profession, and that make formatting changes for clarity, are not expected to impact these

other persons as the changes will not change the quantity or number of exchanges between any persons. The amendments to Section R156-55c-302b that extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact these persons as any examinee may still take each exam the same amount of times per year. The amendment to Section R156-55c-302b deleting the requirement that an applicant pass all licensing exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55c-302c creating expedited licensure requirements are expected to create a fiscal benefit for many of these other persons if it results in their becoming licensed at a higher level, and/or eliminates the cost to them of retaking licensing exams that they have already passed and reduces a delay in their becoming licensed at a higher level. However, the full impact cannot be estimated because it will depend on the unique licensing and employment choices made by each individual person and this relevant data is unavailable.

The new Section R156-55c-302c that creates an expedited licensure pathway will apply to apprentice plumbers, and to other applicants seeking licensure as a journeyman plumber or residential journeyman plumber. These individuals will now have the opportunity to obtain a journeyman license after approximately two and a half years, as opposed to the traditional four-year licensure track. This may reduce their time-based experience requirement by as much as one and a half years. Additionally, an individual may obtain a residential journeyman license after one and a half years, thereby reducing their time-based experience requirement by as much as six months. Although the full impact from new Section R156-55c-302c will depend on the unique licensing and employment choices made by each individual person, the Division estimates that approximately four individuals per year may be able to proceed more quickly towards licensure using the new expedited licensure pathway. This will result in significant fiscal benefits for such persons. For example, without any formal training or education, an individual seeking employment with a plumbing contractor in the designated starting position of "apprentice" can expect a wage of $14 to $23 an hour, whereas an experienced employee who holds the position of "journeyman" can expect a much higher hourly wage ranging from $25 to $36 for residential and non-residential work. Accordingly, the Division estimates that an apprentice plumber who is able to obtain licensure as a journeyman by means of expedited licensure could experience, on average, a potential earnings increase of $14.50 per hour, or approximately $29,000 per year, over a 4-year period.

Second, the Division expects an individual apprentice may experience a one-time savings of approximately $1,500 resulting from a reduction in their cost of tuition and materials to attend an approved apprenticeship program. The average cost of tuition and materials to attend a program is approximately $520 per semester, equating to $4,160 for the 4 years (8 semesters) of required education. By completing the education in two and a half years, potentially avoiding the cost of tuition and materials for the additional one and a half years, an individual apprentice could see, in theory, a one-time savings of these costs.

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 because these amendments will result either in no fiscal impact or in a fiscal benefit.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$75	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$6,000	$6,000	$6,000
Other Person	$0	$0	$0
Total Fiscal Costs:	**$6,075**	**$6,000**	**$6,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$116,000	$116,000	$116,000
Total Fiscal Benefits:	**$116,000**	**$116,000**	**$116,000**
Net Fiscal Benefits:	**$109,925**	**$110,000**	**$110,000**

H) Department head sign-off on regulatory impact:

The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

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

By recommendation from the Plumbers Licensing Board (Board) and the Construction Service Commission (Commission), in response to HB187 and HB 226 (2019), the Division proposes these amendments to clarify this rule and conform it to current practices in the industry that have been found to be outdated and needlessly onerous by the Board and Commission. The changes to Sections R156-55c-102, R156-55c-302a, R156-55c-304, R156-55c-501, and R156-55c-401 are nonsubstantive amendments to add clarity to definitions, remove the needless "rolling clock" for completing requirements for licensure, or streamlining the rule by removing redundancies accomplished in other rules. The new Sections R156-55c-302c and R156-55c-303, are added to accommodate expedited licensure, as well as online form requirements. In essence, these rule amendments clarify and update requirements for licensure as a plumber in the state of Utah. Small Businesses (less than 50 employees): The proposed changes are an update for definitions in the practices of the profession and make formatting changes for clarity. These changes are not expected to impact small businesses. The amendments to Section R156-55c-302b extend the 25-day waiting period after a failed exam to a 30-day waiting period are also not expected to impact small businesses as the examinee may still take each exam the same amount of times per year. The amendment to Section R156-55c-302b that deletes the requirement that an applicant pass all exams within a one-year period (the one-year "rolling clock" requirement), and the new Section R156-55c-302c that creates expedited licensure requirements, are expected to create a significant fiscal benefit for the estimated 1,139 small businesses that may be impacted in the plumbing industry (NAICS 238221 and 238222). Accordingly, these proposed amendments are expected to significantly reduce current delays in many individuals becoming licensed, and to encourage many individuals to become licensed at a higher level. Small businesses will therefore be able to more easily hire journeyman plumbers, residential journeyman plumbers, master plumbers, and residential master plumbers. Additionally, newly licensed master plumbers may be able to create their own small businesses or serve as qualifiers for other small businesses. However, the full impact of these expected significant fiscal benefits to small businesses cannot be estimated because they will depend on the unique licensing, education, and employment choices made by each individual applicant, as well as on the characteristics of each small business. This relevant data is unavailable and the cost of acquiring the data is prohibitively expensive. Regulatory Impact to Non-Small Businesses (50 or more employees): There are 42 non-small businesses in Utah in the plumbing contractor industry in question (NAICS 238221, and NAICS 238222). The proposed changes that update definitions and ensure that this rule encompasses current requirements in the profession and making formatting changes for clarity, are not expected to impact non-small businesses. The proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses for the same reasons as described above for small businesses. These costs are either inestimable, for the reasons stated, or there is no fiscal impact.

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

Francine A. Giani, 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)	Subsection 58-1-202(1)(a)	Section 58-55-101

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
12/18/2019	9:00 AM	Heber Wells Bldg, 160 E 300 S, North Conference Room (first floor), Salt Lake City, UT

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	**Date:**	11/04/2019

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Act Rule.
R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102([~~23~~]26) and this rule, means:

(a) for non-residential plumbing work, the apprentice and the supervising plumber are physically present on the same project or jobsite [~~site~~]but are not required to maintain a direct line of [~~be within~~]sight;[~~of one another.~~]

(b) for residential plumbing work, the supervising plumber, when not physically present on the same project or jobsite as the apprentice, is available to provide direction, oversight, inspection, and evaluation of the apprentice's work as to ensure that the end result complies with applicable standards.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) installation, repair or replacement of the following residential type Plumbing Appliances:

(i) dishwashers;

(ii) refrigerators;

(iii) freezers;

(iv) ice makers;

(v) stoves;

(vi) ranges;

(vii) clothes washers;

(viii) clothes dryers; and

(b) repair or replacement of the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed $300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work:

(i) tub or shower trim;

(ii) tub or shower valve;

(iii) toilet flush valve;

(iv) toilet removal and reset;

(v) garbage disposal;

(vi) kitchen or lavatory sink P-trap;

(vii) kitchen or lavatory faucet rebuild and install;

(viii) supply line replacement after the fixture valve; and

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater, or work to include the initial installation of Plumbing Appurtenances, Fixtures and Systems.

(4) Plumbing Appliances, Appurtenances, Fixtures, and Systems, as used in this rule, shall have the same meaning as defined by Title 15A, State Construction and Fire Codes Act.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-302a. Qualification for Licensure - [~~Training~~]Education and [~~Instruction~~]Experience Requirements.

[~~In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction~~]The education and experience requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) Master Plumber:

(a) An applicant under Subsection 58-55-302(3)(a)(i)(A) shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Journeyman Plumber.

(b) An applicant under Subsection 58-55-302(3)(a)(i)(B) shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the Council for Higher Education Accreditation (CHEA); and

(ii) have at least 2,000 hours of supervisory experience as a licensed Journeyman Plumber.

(2) Residential Master Plumber:

(a) An applicant under Subsection 58-55-302(3)(b)(i) shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Residential Journeyman Plumber.

(b) An applicant under Subsection 58-55-302(3)(b)(ii) shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the Council for Higher Education Accreditation (CHEA); and

(ii) have at least 2,000 hours of supervisory experience as a licensed Residential Journeyman Plumber.

(3) Journeyman Plumber:

(a) An applicant under Subsection 58-55-302(3)(c)(i) shall have completed:

(i) at least 576 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) at least 8,000 hours of full-time work experience as a licensed Apprentice Plumber.

(b) An applicant under Subsection 58-55-302(3)(c)(ii) shall have completed at least 16,000 hours of full-time work experience as a licensed Apprentice Plumber.

(c) An applicant licensed as a Residential Journeyman Plumber shall have completed:

(i) at least 2,000 hours of full-time work experience in non-residential plumbing while licensed as an Apprentice Plumber; and

(ii) the fourth year (144 hours) of a planned program of training that meets the requirements of Subsection (5).

(4) Residential Journeyman Plumber:

(a) An applicant under Subsection 58-55-302(3)(d)(i) shall have completed:

(i) at least 432 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) at least 6,000 hours of full-time work experience as a licensed Apprentice Plumber.

(b) An applicant under Subsection 58-55-302(3)(d)(ii) shall produce satisfactory evidence, using a form provided by the Division, that the applicant:

(i) has completed at least 12,000 hours of full-time work experience in a maintenance or repair trade; and

(ii) at least 9,000 of the required 12,000 hours directly involve the plumbing trade.

(5)(a) The "planned program of training approved by the Division" pursuant to Subsections 58-55-302(3)(c)(i) and (d)(i), shall consist of formal classroom education in the plumbing trade that:

(i) includes measures of competency and achievement level for each student;

(ii) is conducted by competent qualified staff;

(iii) is conducted by an entity approved by:

(A) the Utah Board of Regents;

(B) the Utah System of Technical Colleges Board of Trustees; or

(C) the Plumbers Licensing Board when the program is out-of-state; and

(iv) includes at least 81 hours of classroom instruction per semester.

(b) "Completion" of a planned program of training under Subsections 58-55-302(3)(c) and (d) and this rule, means that the applicant:

(i) attended a minimum of 72 classroom instruction hours each semester; and

(ii) passed each class with a score of at least 75%.

(6) On the job training and instruction shall include measurements of the apprentice's performance in the plumbing trade.

(7) No more than 3,000 hours may be earned during any 12-month period.

(8) As used in Subsection 58-55-302(3)(c) and (d) and this rule, "full-time training", "full-time experience", "work experience", and "full-time work experience" mean work experience that is lawfully performed preceding the date of application, in accordance with all licensing and supervision requirements.

[~~(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):~~

~~(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302a(4) and (6).~~

~~(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);~~

~~(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;~~

~~(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and~~

~~(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.~~

~~(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;~~

~~(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;~~

~~(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and~~

~~(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.~~

~~TABLE I~~
~~Training and Instruction~~

~~Work Process~~	~~Minimum Hours~~
~~A. Use of hand tools, equipment and pipe machinery~~	~~200~~
~~B. Installation of piping for waste, soil, sewer and vent lines~~	~~2,000~~
~~C. Installation of hot and cold water for domestic purposes~~	~~1,400~~
~~D. Installation and setting of plumbing appliances and fixtures~~	~~1,200~~
~~E. Maintenance and repair of plumbing~~	~~600~~
~~F. General pipe work including process and industrial hours~~	~~600~~
~~G. Gas piping or service piping~~	~~400~~
~~H. Welding, soldering and brazing as it applies to the trade~~	~~100~~
~~I. Service and maintenance of gas controls and equipment~~	~~100~~
~~J. Hydronics piping and equipment installation~~	~~300~~
~~K. Fire suppression system installation~~	~~100~~

~~(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):~~

~~(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302a(4) and (6).~~

~~(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);~~

~~(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;~~

~~(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and~~

~~(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.~~

~~(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;~~

~~(ii) the experience shall be obtained while licensed as an apprentice plumber;~~

~~(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;~~

~~(iv) the hours shall be in eight of the ten work process areas listed in Table II; and~~

~~(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.~~

~~TABLE II~~
~~Training and Instruction~~

~~Work Process~~	~~Minimum Hours~~
~~A. Use of hand tools, equipment and pipe machinery~~	~~100~~
~~B. Installation of piping for waste, soil, sewer and vent lines~~	~~1,600~~
~~C. Installation of hot and cold water for domestic purposes~~	~~1,200~~
~~D. Installation and setting of plumbing appliances and fixtures~~	~~800~~
~~E. Maintenance and repair of plumbing~~	~~600~~
~~F. Gas piping or service piping~~	~~400~~

~~G. Service and maintenance of gas controls and equipment 100~~

~~H. Welding, soldering and brazing as it applies to the trade 100~~

~~I. Hydronics piping and equipment installation 300~~

~~J. Fire suppression system installation 100~~

~~(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.~~

~~(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.~~

~~(5) Formal classroom instruction required by this section shall meet the following requirements:~~

~~(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and~~

~~(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.~~

~~(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:~~

~~(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;~~

~~(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and~~

~~(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.~~]

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection[~~s 58-1-203(2) and 58-1-301(3)~~] 58-55-302(1)(c)(i), the examination requirements for licensure [~~in Subsection 58-55-302(1)(c)(i) -~~]are established as follows:

(1) [~~The applicant shall obtain a minimum score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.~~]Master Plumber applicants shall pass:

(a) the Utah Master Plumber Theory Exam; and

(b) the Utah Plumber Practical Exam.

(2) Residential Master Plumber applicants shall pass:

(a) the Utah Residential Master Plumber Theory Exam; and

(b) the Utah Residential Plumber Practical Exam.

(3) Journeyman Plumber applicants shall pass:

(a) the Utah Journeyman Plumber Theory Exam; and

(b) the Utah Plumber Practical Exam.

(4) Residential Journeyman Plumber applicants shall pass:

(a) the Utah Residential Journeyman Plumber Theory Exam; and

(b) the Utah Residential Plumber Practical Exam.

([~~2~~]5) Admission to the [~~examinations~~]exams is permitted after:

(a) the applicant has completed all requirements for licensure [~~set forth in this section and -~~]in Section[s] R156-55c-302a[~~- and R156-55c-302c~~]; or

(b) the Journeyman Plumber applicant under Subsection R156-55c-302a(3)(a) has completed:

(i) the first semester of the fourth year of the [~~apprentice education~~]planned program of training[~~set forth in Subsection R156-55c-302a(1)(a)(ii)~~]; and

(ii) at least 6,000 hours of the required full-time work experience[~~not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i)~~].

[~~(3) (a) If an applicant fails any section of the examination, the applicant shall retake that section.~~

~~(b) An applicant shall wait at least 25 days for the first two retakes, and thereafter shall wait 120 days between retakes.~~

~~(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score for that section shall be valid for one year from the pass date. After one year the applicant shall retake any previously passed section to support any subsequent application for licensure.~~]

(6) An applicant shall obtain:

(a) a score of at least 70% on the Utah Plumber Practical Exam; and

(b) a score of at least 70% on the Utah Plumber Theory Exam.

(7) An applicant who fails an exam may retake that exam:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than 120 days following any failure thereafter.

[~~**R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.**~~

~~In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:~~

~~(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:~~

~~(a) supervising employees: 700 hours;~~

~~(b) supervising construction projects: 700 hours;~~

~~(c) cost/price management: 300 hours; and~~

~~(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.~~

~~(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):~~

~~(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;~~

~~(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;~~

~~(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and~~

~~(d) no more than 2000 hours of experience may be earned during any 12-month period.~~

~~(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302c(1).~~

~~(a) The degree shall be accredited by one of the following:~~

~~(i) Middle States Association of Colleges and Schools;~~

~~(ii) New England Association of Colleges and Schools;~~

~~(iii) North Central Association of Colleges and Schools;~~

~~(iv) Northwest Commission on Colleges and Universities;~~

~~(v) Southern Association of Colleges and Schools; or~~

~~(vi) Western Association of Schools and Colleges.~~

~~(b) The degree shall be in one of the following courses of study:~~

~~(i) accounting;~~

~~(ii) apprenticeship;~~

~~(iii) business management;~~

~~(iv) communications;~~

~~(v) computer systems and computer information systems;~~

~~(vi) construction management;~~

~~(vii) engineering;~~

~~(viii) environmental technology;~~

~~(ix) finance;~~

~~(x) human resources; or~~

~~(xi) marketing.~~]

R156-55c-302c. Qualifications - Expedited Licensure.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the requirements for expedited licensure pursuant to Subsections 58-55-302(3)(c)(iii) and 58-55-302(3)(d)(iii) are as follows:

(1) A licensed apprentice plumber may take the approved competency exams, in sequence beginning with 1A and continuing through 4B, to either satisfy the education requirement, or determine placement in a planned program of training approved by the Division.

(2) Division pre-approval is not required to sit for any competency exam.

(3) An applicant may register directly with the Division's approved exam provider to sit for a competency exam.

(4) An applicant may attempt each competency exam one time.

(5) Admission to the subsequent competency exam is permitted after obtaining a minimum score of 70%.

(6) Placement in a planned program of training is determined when the applicant scores below 70% on the corresponding competency exam.

(7) Upon completion of all qualifying competency exams, the applicant may sit for the Utah journeyman or residential journeyman plumber exams.

R156-55c-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 55, is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) In accordance with Subsection 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee shall comply with the continuing education requirements set forth in Section R156-55c-304.

(4) All licensees shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55c-304. Continuing Education - Standards.

Standards for continuing education shall be in accordance with Subsections R156-55a-303b(2) through (10), except as otherwise provided in this section:

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete at least 12 hours of continuing education during each two-year license term. [~~A minimum of~~]At least eight hours shall be core education. The remaining four hours may be professional or core education.

(2) "Core continuing education" is defined as education covering:

(a) International Building, Mechanical, Plumbing, and International Energy Conservation Codes and Utah building code amendments as adopted or proposed for adoption;

(b) the Americans with Disability Act;

(c) medical gas, National Fire Protection Association 13D and 54;[~~and~~]

(d) hydronics and waste water treatment; or

(e) Occupational Safety and Health Administration (OSHA) training.

(3) "Professional continuing education" is defined as education covering:

(a) energy conservation[~~,~~];

(b) management training[~~,~~];

(c) new technology[~~,~~];

(d) plan reading;[~~ and~~]

([~~b~~]e) lien laws and Utah construction registry; or

[~~(c) Occupational Safety and Health Administration (OSHA) training; and~~]

([~~d~~]f) government regulations.

[~~(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:~~

~~(a) mechanical office and business skills, such as typing, speed reading, memory improvement, and report writing;~~

~~(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;~~

~~(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and~~

~~(d) meetings held in conjunction with the general business of the licensee or employer.~~]

([~~5~~]4) The Division may defer or waive continuing education requirements for:

(a) [~~waive the continuing education requirements for a licensee that is~~]an instructor of [~~an approved education apprenticeship~~]a planned program of training under Subsection R156-55c-302a(5);[~~ or~~]

(b) [~~waive or defer the continuing education requirements~~]a board member who regularly attends the Plumber Licensing Board meetings; or

(c) any licensee as provided in Section R156-1-308d.

[~~(6) A continuing education course shall meet the following standards:~~

~~(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions, or distance learning modules. The remaining ten minutes may be used for breaks.~~]

([~~b~~]5) Provider. [~~The~~]A course provider need not be listed in Subsection 58-55-302.5(2), but shall meet the other requirements of this section and [~~shall~~]be[~~ one of the following~~]:

([~~i~~]a) a recognized accredited college or university;

([~~ii~~]b) a state or federal agency;

([~~iii~~]c) a professional association or organization involved in the construction trades; or

([~~iv~~]d) a commercial continuing education provider providing a program related to the plumbing trade.

([~~c~~]6) Content. Course[~~The~~] content [~~of the course~~]shall be relevant to the practice of the plumbing trade and consistent with [~~the~~]Utah laws and rules[~~ of this state~~].

[~~(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.~~

~~(e) Teaching Methods. The course shall be presented in a competent, well-organized and sequential manner consistent with the stated purpose and objective of the program.~~

~~(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.~~

~~(g) Distance learning. A course that is provided through internet or home study courses may be recognized for continuing education if the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.~~

~~(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division, and shall provide to individuals completing the course a certificate that contains the following information:~~

~~(i) the date of the course;~~

~~(ii) the name of the course provider;~~

~~(iii) the name of the instructor;~~

~~(iv) the course title;~~

~~(v) the hours of continuing education credit;~~

~~(vi) the attendee's name;~~

~~(vii) the attendee's license number; and~~

~~(viii) the signature of the course provider.~~

~~(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.~~

~~(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts, and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (10). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.~~

~~(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.~~

~~(10) A course provider shall submit to the continuing education registry, in the format required by the continuing education registry:~~

~~(a) applications for approval of continuing education courses; and~~

~~(b) on behalf of each licensee, verification of the licensee's attendance and completion of a continuing education course.~~

~~(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses that meet the standards set forth under this section.~~

~~(12) Continuing Education Registry.~~

~~(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.~~

~~(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:~~

~~(i) through its internet site electronically receive applications for course approval from continuing education course providers, and submit to the Division for review and approval only those courses which meet the standards set forth under this section;~~

~~(ii) publish on its website listings of continuing education courses approved by the Division, which meet the standards for continuing education credit under this rule;~~

~~(iii) maintain accurate records of approved qualified continuing education courses;~~

~~(iv) maintain accurate records of verification of attendance and completion for each individual licensee, which the licensee may review for compliance with this rule; and~~

~~(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.~~

~~(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.~~]

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

The requirements of Subsections 58-55-102(34) and 58-55-302(3)(e) are clarified and established as follows:

(1) [~~The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.~~

~~(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:~~

~~(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or~~

~~(b) the~~]A plumbing contractor may comply with the supervision requirements of Subsection 58-55-501(12), by contracting[~~contract~~] with a licensed professional employer organization to employ one or more licensed plumbers[~~such persons~~].

(2) A licensed supervisor may have up to:

(a) three licensed apprentice plumbers on non-residential projects; or

(b) three licensed apprentice plumbers on residential projects.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

(2) failing [~~as a licensed plumber to carry a copy of his~~]to timely provide upon request, the licensee's current plumber['~~s~~] license, or license number[~~ on his person or in close proximity to his person~~] when performing plumbing work[~~ or to display that license upon request of a representative of the Division or any law enforcement officer~~];

(3) [~~failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and~~

~~(4)~~]failing [~~as a licensee~~]to provide proof of completed continuing education within 30 days of the Division's request; and

(4) failing to be knowledgeable of the plumber licensing laws and rules.

KEY: occupational licensing, licensing, plumbers, plumbing
Date of Enactment or Last Substantive Amendment: [~~April 10, 2017~~]2020
Notice of Continuation: August 8, 2016
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-325**	**Filing No. 52341**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Public Education Exit and Engagement Surveys
3. Purpose of the new rule or reason for the change:
Recent legislation required the Utah State Board of Education (Board) to implement a public education exit survey to gather data to inform legislative and local education agencies (LEA) policy.
4. Summary of the new rule or change:
Rule R277-325 incorporates the exit and engagement survey questions by reference, and outlines procedures for LEAs to administer the surveys to staff.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule is not expected to have any fiscal impact on state government revenues or expenditures. It renumbers rules and incorporates formatting and technical changes to comply with the rule-writing manual. Rule R277-524 is being renumbered to Rule R277-324. The original edits proposed for Rule R277-524 are reflected in this new rule.
B) Local governments:
This rule is not expected to have any material impact on local governments' revenues or expenditures. It renumbers rules and incorporates formatting and technical changes to comply with the rule-writing manual. Rule R277-524 is being renumbered to Rule R277-324. The original edits proposed for Rule R277-524 are reflected in this new rule.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule change is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It renumbers rules and incorporates formatting and technical changes to comply with the rule-writing manual. Rule R277-524 is being renumbered to Rule R277-324. The original edits proposed for Rule R277-524 are reflected in this new rule.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule is not expected to have any material fiscal impact on the revenues or expenditures for persons other than small businesses, businesses, or local government entities. It renumbers rules and incorporates formatting and technical changes to comply with the rule-writing manual. Rule R277-524 is being renumbered to Rule R277-324. The original edits proposed for Rule R277-524 are reflected in this new rule.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable large businesses and it does not require any expenditures of or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-11-304

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Model Public Education Exit Survey
Publisher	Utah State Board of Education
Date Issued	11/7/2019
Issue, or version	Version 1

B) This rule adds, updates, or removes the following title of materials incorporated by references :

	Second Incorporation

Official Title of Materials Incorporated (from title page)	Model Public Education Engagement Survey
Publisher	Utah State Board of Education
Date Issued	11/7/2019
Issue, or version	Version 1

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2019

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-325. Public Education Exit and Engagement Surveys.
R277-325-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53G-11-304, which requires the Board to make rules for the creation and administration of a public education exit survey.

(2) The purpose of this rule is to:

(a) adopt minimum standards for LEAs to administer a public education exit and engagement survey; and

(b) adopt a model public education exit and engagement survey for use by LEAs.

R277-325-2. Definitions.

(1) "Educator" means, for purposes of this rule:

(a) a general education classroom teacher;

(b) a preschool teacher;

(c) a special education teacher; or

(d) a school based specialist.

(2) "Survey" means the Model Public Education Exit and Engagement Surveys incorporated by reference in Section R277-325-3.

R277-325-3. Incorporation of Model Public Education Exit and Engagement Surveys by Reference.

(1) This rule incorporates by reference the Model Public Education Exit and Engagement Surveys.

(2) A copy of the model surveys are located at:

(a) https://schools.utah.gov/file/b470b911-a489-4278-8b05-809adbf7e360;

(b) https://schools.utah.gov/file/f3d60dcc-c592-4137-9e90-981a60b749d5; and

(c) the Utah State Board of Education.

R277-325-4. Survey Administration.

(1)(a) Each LEA shall request that the LEA's educators complete the model public education engagement survey, at a minimum, every other year beginning in the 2019-20 school year through a Board approved online provider.

(b) An LEA shall administer the model public education engagement survey in the opposite years from those in which it administers the school climate survey described in Rule R277-623, except as provided in Subsection (2).

(2) An LEA shall request a new educator complete the model public education engagement survey every year for the first three years the educator is in the profession.

(3) Each LEA shall request that an educator leaving the LEA complete the model public education exit survey at the time of their separation from employment through a Board approved online provider.

(4) The surveys:

(a) shall allow each educator to remain anonymous;

(b) may not request the educator's CACTUS ID number;

(c) shall ask each educator to identify the educator's LEA;

(d) may ask each educator to voluntarily identify the educator's school; and

(e) may ask each educator to provide basic non-identifying demographic data as requested by the Superintendent.

(5) An LEA shall adopt written policies to:

(a) restrict access to survey results to appropriate personnel; and

(b) prevent identification of educators who complete the survey.

(6)(a) An LEA may include additional questions along with the required survey questions at the time the LEA administers the surveys.

(b) An LEA may limit dissemination of data from educator answers to questions included in accordance with Subsection (6)(a) in accordance with the LEA's written policies.

(7) If an LEA fails to administer the surveys, the Superintendent may pursue corrective action in accordance with Rule R277-114.

KEY: exit, survey
Date of Enactment of Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-11-304

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-472**	**Filing No. 52342**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Charter School Student Enrollment and Transfers and School District Capacity Information

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

This rule is being amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Utah State Board of Education (Board) policies. It also clarifies language in Section R277-472-6 regarding a school district's obligation to accept a student transferring from a charter school.

4. Summary of the new rule or change:

These amendments provide technical updates and clarify provisions outlining procedures for students transferring from a charter school to a district school.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on state government revenues or expenditures.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The additional clarity is not anticipated to impact local governments' revenues or expenditures.

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

These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about charter school enrollment and school district transfers, and thus does not apply to small businesses.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses.

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

These rule changes are not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures and will not have an independent fiscal impact.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**
State Government	$0
Local Government	$0
Small Businesses	$0
Non-Small Businesses	$0
Other Person	$0
Total Fiscal Costs:	**$0**

Fiscal Benefits	
State Government	$0
Local Government	$0
Small Businesses	$0
Non-Small Businesses	$0
Other Persons	$0
Total Fiscal Benefits:	**$0**
Net Fiscal Benefits:	**$0**

H) Department head sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53G-6-503(2)

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019
~~**$0**~~	~~**$0**~~
10. This rule change MAY* become effective on:	01/07/2019

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.
R277-472-[~~2~~]1. Authority and Purpose.

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

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

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53G-6-503(2), which directs the Board to make rules for a student[~~s~~] transferring between a charter school[~~s~~] and the student's boundary school within the student's district [~~schools~~]of residence and enrolling and withdrawing from charter schools[~~, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities~~].

[~~B.~~](2) The purpose of this rule is to:

(a) provide procedures for a student[~~s~~] transferring between [~~district public schools and~~]a charter school[~~s~~] and the student's boundary school within the student's district of residence;[~~to~~]

(b) define capacity in district [~~public~~]schools to allow for transfers into district schools from charter schools; and [~~to~~]

(c) require LEAs to provide notice to parents and students of schools that have space available.

R277-472-[1]2. Definitions.

[~~A. "Board" means the Utah State Board of Education.~~]

[~~B.~~](1)(a) "Below capacity" [~~at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Subsection 53G-6-503(3) is established if~~]means the grade level or program is less than 100 percent of the district, school, or grade level average.

([~~1~~]b) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by [~~valid, research-based, or federally established standards~~]the school district.

([~~2~~]c) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in this Rule R277-472[~~-3~~], is less than 100 percent of the district elementary or secondary average class size.

[~~C.~~](2) "Elementary [~~(K-6)~~]class size" means the number of students with a primary assignment to a specific teacher.

([~~1~~]a) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

([~~2~~]b) "Elementary class size" shall include all special education students who participate in all or part of the school day excluding those students assigned to [~~self-contained special education classes~~]a special class.

(3) "Full time equivalent" or "FTE" means the ratio of the contract time worked by an educator compared to the LEA's definition of contract time worked by a full-time employee in the same position.

[~~D.~~](4) "Secondary[~~(7-12)~~] class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, [~~Algebra~~]Secondary Math 1, or Earth Systems.

(5)(a) "Special class" means a placement where a student is placed in a classroom and receives specialized instruction and related services, if required, with other students with disabilities.

(b) "Special class" includes students who receive special education and related services outside the regular general education classroom for more than 60% of the school day.

R277-472-3. Elementary Class Size Calculations.

[~~A.~~](1) [~~Elementary class size: ~~]Each school district, [~~(~~]or school as determined by the school district[~~)~~], shall calculate an average elementary class size for each grade level.

(2) [~~Schools~~]A school shall [~~derive this calculation from~~]calculate average elementary class size by dividing the total number of students in a given grade [~~divided~~]by the number of full time licensed teachers assigned to that grade.

([~~1~~]3) [~~Schools shall~~]A school may not count students assigned to multiple grade level classes, nor [~~(and their~~]the school's respectively assigned teachers[~~)~~], in determining average elementary class size for a grade level.

([~~2~~]4) [~~Schools~~]A school shall calculate elementary classes that group students in programs other than by grade level, such as gifted and talented, or [~~English Learner ~~]programs for students learning English, as a class for determining average elementary class size if students participate for the entire instructional day.

([~~a~~]5) If a school[~~s~~] counts students that participate in special programs for part of the school day for determining average elementary class size, the school[~~s~~] shall count the students as part of their age-appropriate grade level, [~~(~~]together with respective teachers[~~)~~], for purposes of [~~this~~]the calculation.

([~~b~~]6) If multiple classes of special programs exist[~~(including self-contained special education classes)~~], a school shall determine an average elementary class size for special programs consistent with state, federal and program standards.

[~~B.~~](7) [~~Elementary school size: ~~]Each school district [~~(~~]or school[~~)~~] shall calculate a school-wide average class size by dividing the total full[~~-~~]-time teachers assigned to direct teaching situations by the total number of students receiving instruction.

([~~1~~]8) [~~Schools shall~~]A school may not include [~~self-contained special education students and teachers~~]a student or teacher in a special class in [~~this calculation.~~]calculating school-wide average class size, but[

~~(2) Schools~~] shall include all other special education students and teachers.

R277-472-4. Secondary Class Size Calculations.

[~~C.~~](1) [~~Secondary average class size:~~]Each school district, [~~(~~]or secondary school as determined by the district[~~)~~], shall calculate an average secondary class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

([~~1~~]2) [~~Schools shall~~]A school may not include [~~self-contained special education students and teachers in this calculation~~]a student or teacher in a special class when calculating average secondary class size, but[~~.~~

~~(2) Schools~~] shall include all other special education students[~~, other than full-time self-contained students,~~] in the calculation.

[~~D.~~](3) [~~District average: Each~~]A school district shall calculate the district-wide average class size for:

(a) each grade level[~~,~~];

(b) each elementary program that enrolls students across grade levels; and [~~for ~~]

(c) each language arts, mathematics, and science course.

([~~1~~]4) A [~~S~~]school district[~~s~~] shall [~~derive the calculation~~]calculate district-wide average class size by dividing the total number of [~~full-time teachers (~~]FTEs[~~)~~] assigned to direct teaching situations by the total number of fully enrolled students.

([~~2~~]5) [~~School districts~~]A school district shall derive all calculations required by this rule using October 1 enrollment and employment data.

[~~E.~~](6)(a) In a school district with only one elementary or secondary school, or only one class of any subject or grade level, the school district[~~s~~] may calculate the average class size for an entire school or the entire school district by averaging all the classes in the school or the school district.

(b) The school district may then determine that any class size less than the school district or school average class size is below capacity.

R277-472-[4]5. School District School Capacity Information.

[~~A.~~](1) [~~School districts~~]A school district shall provide and post the following information to facilitate transfer of students on school district or school websites:

([~~1~~]a) [~~E~~]elementary schools within the school district that are below capacity and available for transfer students;

([~~2~~]b) [~~G~~]grade levels and special programs within elementary schools that are below capacity and available for transfer students;

([~~3~~]c) [~~S~~]secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

([4]d) [~~S~~]special programs within secondary schools that are below capacity and available for transfer students.

[~~B.~~](2) Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

R277-472-[~~5~~]6. [~~Application Procedures for Students Entering and Exiting Charter Schools.~~]Charter School Website Requirements.

[~~A. Each charter school shall post on its website information and procedures required under Subsection 53G-6-503(2).~~

~~B. Each charter school shall develop and post admissions procedures for the charter school including:~~

~~(1) Lottery dates and procedures;~~

~~(2) Admission forms;~~

~~(3) School calendar;~~

~~(4) Non-discrimination assurances;~~

~~(5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;~~

~~(6) A readily accessible transfer form; and~~]

(1) Each charter school shall post on its website:

(a) admission forms;

(b) student transfer forms;

([~~7~~]c) forms for [~~A~~]assurance and parent signature that a student has been admitted to only one public school[~~.~~]; and

(d) all information required by Section R277-551-5.

R277-472-[~~6~~]7. Enrollment of Transferring Charter School Students in District Schools.

[~~A.~~](1) If a charter school student who is a resident of a school district submits required enrollment information for the upcoming school year before June 30, the[~~A~~] school district shall enroll [~~as soon as possible, but no later than~~]the student [~~two weeks after specific formal parental request, a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity~~]in the student's boundary school for the upcoming school year.

(2) Notwithstanding Subsection (1), a school district shall enroll a resident student leaving a charter school, which has been closed, in the student's boundary school.

[~~B.~~](3) [~~Schools~~]A district may limit resident students who are transferring from a charter school to a district school who submit required enrollment information after June 30 for the upcoming school year to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

[~~C.~~](4) A school district [~~shall~~]may not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures[~~/~~] or forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

[~~D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.~~]

[~~E.~~](5) If a school changes the location of services for a student with disabilities, the new location may only be considered a change of placement as determined by the student's IEP and consistent with the [~~Individuals with Disabilities Education Act (~~]IDEA[~~), 20 U.S.C. 1400, Part B~~].

[~~F. Consistent with Subsection 53G-8-205(3), schools may deny enrollment to students in a public school if they have been expelled from another public school.~~]

[~~G.~~](6) A [~~Schools~~]school may deny a student[~~s'~~] enrollment in a public school if the[~~y~~] student leaves a public school with disciplinary procedures pending at the previous [~~Utah~~]public school until previous allegations have been resolved.

[~~H.~~](7) A [~~Charter schools and district schools~~]charter school and district school shall notify each other of student enrollment consistent with Subsection 53G-6-503(4).

KEY: charter schools, students, transfers
Date of Enactment or Last Substantive Amendment: [~~August 7, 2014~~]2020
Notice of Continuation: April 8, 2019
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53G-6-503(2); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-615**	**Filing No. 52335**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Standards and Procedures for Student Searches

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

Section 53G-8-509 requires the Utah State Board of Education (Board) to adopt rules to establish procedures to ensure protection of individual rights against excessive and unreasonable intrusion. The Board has a model search and seizure policy related to Rule R277-615.

4. Summary of the new rule or change:

The amendments to this rule require local education agencies (LEA) to update LEA search and seizure policies to include provisions related to the confiscation and disposal of electronic cigarette products.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. The amendments to this rule require LEAs to update LEA search and seizure policies to include provisions related to the confiscation and disposal of electronic cigarette products. These changes are not expected to have a fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The amendments to this rule require LEAs to update LEA search and seizure policies to include provisions related to the confiscation and disposal of electronic cigarette products. These changes are not expected to have a fiscal impact.

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

These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about local education agency standards and procedures for student searches and thus does not apply to small businesses.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses.

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

These rule changes are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule is about local education agency standards and procedures for student searches and thus does not apply to persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**

Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses. These rule changes has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-8-509

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2019

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-615. Standards and Procedures for Student Searches.
R277-615-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53G-8-509, which directs the Board and LEAs to adopt rules to protect students against unreasonable and excessive intrusion of personal rights; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to direct LEAs to adopt policies to protect student rights with procedures and provisions that balance students' rights and privacy with the responsibility of school officials for the safety and protection of students and adults while on school property or at school-sponsored events.

R277-615-2. Definitions.

(1) "Controlled substance" has the same meaning as provided in Subsection 58-37-2(1)(f).

(2)(a) "Electronic cigarette" means:

(i) an electronic device used to deliver or capable of delivering vapor containing nicotine or another substance to an individual's respiratory system;

(ii) a component of the device described in Subsection (2)(a)(i); or

(iii) an accessory sold in the same package as the device described in Subsection (2)(a)(i).

(b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section 26-38-2.

(3) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.

(4) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.

[~~(2)~~]5(a) "Law enforcement authorities" means officers working under the direct supervision and in the employment of police or law enforcement, as opposed to under the supervision of an LEA.

(b) Law enforcement authorities have received police officer training and are acting in that capacity.

[~~(3)~~]6 "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

[~~(4)~~]7 "Weapon" means any item capable of causing death or serious bodily injury or a facsimile or representation of the item.

R277-615-3. Superintendent Responsibilities.

(1) The Superintendent shall provide consistent definitions for LEAs to include in search and seizure policies.

(2) The Superintendent shall develop a model search and seizure policy as guidance for LEAs.

(3) The Superintendent shall require an assurance from LEAs in the Utah Consolidated Report regarding the student search policy required under Section 53G-8-509.

R277-615-4. LEA Responsibilities.

(1) An LEA shall update the LEA's [~~develop a~~]policy for searching students for controlled substances and weapons to include provisions related to searching students for electronic cigarette products.

(2) An LEA shall include appropriate interested parties in the development of student search policies, including:

(a) parents;

(b) school employees; and

(c) licensed school employees.

(3) An LEA policy [~~developed pursuant to~~]described in Subsection (1) shall ensure protection of individual student rights against excessive and unreasonable intrusion.

(4) An LEA shall make policies available electronically and in [~~and in~~]printed form to parents and students upon enrollment.

(5) An LEA shall provide adequate training to appropriate classes of employees for fair and consistent implementation of student search policies.

KEY: students, searches

Date of Enactment or Last Substantive Amendment: [~~May 10, 2017~~]2020

Notice of Continuation: March 15, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53G-8-509; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-624**	**Filing No. 52334**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

Electronic Cigarette Products in Schools

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

Electronic cigarette usage in public schools has increased significantly over the past year. Local education agencies (LEA) have asked Utah State Board of Education (Board) for direction on whether schools may confiscate and dispose of electronic cigarette products found on school grounds. Section 53E-3-501 requires the Board to establish minimum standards for public schools related to discipline and control.

4. Summary of the new rule or change:

The newly enacted rule requires LEAs to establish policies regarding possession or use of electronic cigarette products by students on school property, including policies regarding confiscation and disposal of electronic cigarette products.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule is not expected to have a fiscal impact on state government revenues or expenditures. It defines electronic cigarette and electronic cigarette products. It requires LEAs to adopt policies for responding to possession or use of electronic cigarette products by a student on school property. It also allows LEAs to release confiscated electronic cigarette substances suspected to contain illegal controlled substances to law enforcement as part of an investigation or action in lieu of disposing or destroying the confiscated electronic cigarette product.

B) Local governments:

This rule is not expected to have material impacts on local governments' revenues or expenditures. It defines electronic cigarette and electronic cigarette products. It requires LEAs to adopt policies for responding to possession or use of electronic cigarette products by a student on school property. It also allows LEAs to release confiscated electronic cigarette substances suspected to contain illegal controlled substances to law enforcement as part of an investigation or action in lieu of disposing or destroying the confiscated electronic cigarette product. LEAs will need to update local policies to align with this rule; however, these are activities LEAs can accomplish using existing resources.

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

This rule is not expected to have a direct fiscal impact on small businesses' revenues or expenditures. It requires LEAs to adopt policies for responding to possession or use of electronic cigarette products by a student on school property. It also allows LEAs to release confiscated electronic cigarette substances suspected to contain illegal controlled substances to law enforcement as part of an investigation or action in lieu of disposing or destroying the confiscated electronic cigarette product. LEAs may contract with small businesses in the state for activities related to prevention or reduction of student electronic cigarette product use. However, these contracts and activities are at an LEA's discretion. Therefore, this rule is not expected to have direct fiscal impact on small businesses' revenues or expenditures.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses.

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

This rule is not expected to have any direct fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It requires LEAs to adopt policies for responding to possession or use of electronic cigarette products by a student on school property. It also allows LEAs to release confiscated electronic cigarette substances suspected to contain illegal controlled substances to law enforcement as part of an investigation or action in lieu of disposing or destroying the confiscated electronic cigarette product. LEAs may contract with persons other than small businesses, businesses, or local government entities in the state for activities related to prevention or reduction of student electronic cigarette product use. However, these contracts and activities are at an LEA's discretion. Therefore, this rule is not expected to have direct fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are

no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses.
B) Name and title of department head commenting on the fiscal impacts:
Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(b)

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2019
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-624. Electronic Cigarette Products in Schools.
R277-624-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(b), which requires the Board to establish minimum standards for the public schools, including rules and minimum standards governing discipline and control.

(2) The purpose of this rule is to require LEAs to establish policies regarding possession or use of electronic cigarette products by students on school property, including policies regarding confiscation and disposal of electronic cigarette products.

R277-624-2. Definitions.

(1)(a) "Electronic cigarette" means:

(i) an electronic device used to deliver or capable of delivering vapor containing nicotine or another substance to an individual's respiratory system;

(ii) a component of the device described in Subsection (1)(a)(i); or

(iii) an accessory sold in the same package as the device described in Subsection (1)(a)(i).

(b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section 26-38-2.

(2) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.

(3) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.

R277-624-3. LEA Policies Governing Electronic Cigarette Products in Schools.

(1) An LEA shall adopt a policy for responding to possession or use of electronic cigarette products by a student on school property.

(2) A policy described in Subsection (1) shall:

(a) include policies or procedures for the confiscation of electronic cigarette products; and

(b) require school personnel to dispose or destroy confiscated electronic cigarette products.

(3) If a school official has reasonable belief that a confiscated electronic cigarette product has an illegal substance within the electronic cigarette product, the school official may provide the confiscated electronic cigarette product to local law enforcement for storage, testing, and disposal in lieu of disposing or destroying the confiscated electronic cigarette product as described in Subsection (2)(b).

KEY: electronic cigarette, policy
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-715**	**Filing No. 52344**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Out-of-School Time Program Standards

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

Section 53E-3-508 requires the Utah State Board of Education (Board), in consultation with the Department of Workforce Services (DWS), to make rules that describe the standards for a high quality program operating outside of the regular school day for elementary or secondary students offered by a school district, charter school, private provider, including a non-profit provider, or municipality.

4. Summary of the new rule or change:

The amendments to Rule R277-715 add an additional external quality assessment tool as part of program monitoring, and clarify reporting requirements for participating programs.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. Since the original enactment of the rule in 2016, DWS and the Board have added an additional external quality assessment tool as part of program monitoring. This quality assessment tool is defined in this rule and added as an option for a participating program to use to determine the extent to which the program is meeting the standards of a high quality program. This change is not expected to have a fiscal impact because this tool is already developed and in use and thus this rule is being updated to reflect current program practices.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. Since the original enactment of the rule in 2016, DWS and the Board have added an additional external quality assessment tool as part of program monitoring. This quality assessment tool is defined in this rule and added as an option for a participating program to use to determine the extent to which the program is meeting the standards of a high quality program. This change is not expected to have a fiscal impact because this tool is already developed and in use and thus this rule is being updated to reflect current program practices.

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

These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about out-of-school time program standards which apply to programs operated by school districts, charter schools, non-profit providers, or municipalities and thus will not impact small businesses.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses.

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

These rule changes are not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures. Since the original enactment of this rule in 2016, DWS and the Board have added an additional external quality assessment tool as part of program monitoring. This quality assessment tool is defined in this rule and added as an option for a participating program to use to determine the extent to which the program is meeting the standards of a high quality program. This change is not expected to have a fiscal impact because this tool is already developed and in use and thus this rule is being updated to reflect current program practices.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-3-508

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2019

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-715. Out-of-School Time Program Standards.
R277-715-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-4-301(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53E-3-508, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.

(2) The purpose of this rule is to set standards for high quality out-of-school time programs[~~,~~] and define[~~establish~~] the programs required to adopt those standards.

R277-715-2. Definitions.

(1) "Assessment tool" means the Utah After-school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After-school Network.

(2) "Out-of-school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.

(3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school time programming.

(4) "Program quality assessment tool" or "PQA tool" means the evidence-based program quality assessment tool used to assess program quality during an observation in classrooms with school age and teen children, including children five years old and older.

(5) "Reliable observer" means a Department of Workforce Services or Superintendent approved individual who is trained to utilize an evidence-based classroom observation tool to fidelity.

R277-715-3. Requirements and Standards for High Quality Out-of-School Time Programs.

(1) A participating program shall:

(a)(i) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section; or

(ii) allow a reliable observer to use the quality assessment tool to determine the extent to which the program is meeting the standards described in this Section;

(b) ensure that it is working toward achieving the standards described in this Section; and

(c) for a participating program that receives after school program funds from the Board, collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.

(2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.

(3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:

(a) staff are professionally qualified to work with program participants;

(b) policies and procedures are established and implemented to ensure the health and safety of all program participants;

(c) program participants are carefully supervised to maintain safety;

(d) a transportation policy is established and communicated to staff and families of participants; and

(e) a consistent and responsive behavior management plan is established and implemented.

(4) The relationships standard includes the following components in order to develop and maintain positive relationships among staff, participants, families, schools, and communities, including that:

(a) staff and participants know, respect, and support each other;

(b) the program communicates and collaborates with the school and the community; and

(c) the program fosters family involvement to support program goals.

(5) The skills standard includes the following components in order to encourage participants to learn new skills, including that:

(a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;

(b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and

(c) the program offers a variety of life skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.

(6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:

(a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;

(b) establishes and consistently implements clearly-defined policies and procedures;

(c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and

(d) provides professional development and training opportunities to enhance staff job performance.

KEY: out-of-school time, programs, standards, students
Date of Enactment or Last Substantive Amendment: [~~November 7, 2016~~]2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-508

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R313-15-1006**	**Filing No. 52329**

Agency Information

1. Agency:	Environmental Quality, Waste Management and Radiation Control
Room no.:	Second Floor

Building:	Multi-Agency State Office Building (MASOB)	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, UT 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Transfer for Disposal and Manifests

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

These proposed rule changes update the dates of incorporation by reference in R313-15-1006 from 2010 to 2019 in order to incorporate the minor corrections promulgated by the U.S. Nuclear Regulatory Commission (NRC) and published in the December 1, 2015 (80 FR 74974) issue of the Federal Register. The NRC replaced the reference to NRC's former "Office of Information Services" with the current office name of "Office of the Chief Information Officer" in order to properly reflect the organizational change made by the NRC. Utah's

adoption of this minor correction is required for regulatory compatibility as an Agreement State with the NRC for administering the radioactive materials program in Utah.

4. Summary of the new rule or change:

These proposed changes revise the dates of incorporation of the referenced sections to 10 CFR Part 20 from 2010 to 2019. This results in incorporating the changes the NRC made to Appendix G of 10 CFR Part 20 and published in the Federal Register on December 1, 2015 (80 FR 74974) . Specifically, the NRC changed the references in 10 CFR Part 20 Appendix G from the "Office of Information Services" to the "Office of the Chief Information Officer." This reference change simply reflects the organizational changes the NRC has made and thus references the correct office that is responsible for information services at the NRC. As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. While the change to the referenced NRC office is minor in nature, the NRC designated the change as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Thus, the proposed changes to the dates of the incorporation by reference in R313-15-1006 from 2010 to 2019 incorporate the minor corrections to reference the correct office within the NRC as found in Appendix G of 10 CFR Part 20.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The change in the dates of the incorporation by reference results in referencing the proper office at the NRC. As a minor reference correction there is no fiscal impact to the state budget or to any of the state entities that have a radioactive materials license.

B) Local governments:

There are fewer than five local governments that have a radioactive materials license associated with the possession and use of portable gauges. These changes in the dates of the incorporation by reference result in referencing the proper office at the NRC. As a minor reference correction there is no fiscal impact to any of the local government licensees.

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

These changes in the dates of the incorporation by reference result in referencing the proper office at the NRC. As a minor reference correction, there is no fiscal impact to any of the small business radioactive materials licensees.

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

These changes in the dates of the incorporation by reference result in referencing the proper office at the NRC. As a minor reference correction, there is no fiscal impact to any non-small business radioactive materials licensees.

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

These changes in the dates of the incorporation by reference result in referencing the proper office at the NRC. As a minor reference correction, there is no fiscal impact to any of the other radioactive materials licensees.

F) Compliance costs for affected persons:

As a minor correction to reference the correct office at the NRC, there are no compliance costs for any of the radioactive materials licensees in Utah.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The interim executive director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.

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

As a minor correction to reference the correct office at the NRC, there are no compliance costs for any of the radioactive materials licensees in Utah.

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

Scott Baird, 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 19-3-104	Section 19-6-104	

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Title 10 Part 20, Appendix G, Code of Federal Regulations, Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests (10 CFR Part 20, App. G)
Publisher	U.S. Government Publishing Office
Date Issued	2019
Issue, or version	January 1, 2019

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	02/14/2020

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

Agency Authorization Information

Agency head or designee, and title:	Ty Howard, Division Director	**Date:**	11/07/2019

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-15. Standards for Protection Against Radiation.
R313-15-1006. Transfer for Disposal and Manifests.

(1) The requirements of Section R313-15-1006 and Appendix G of 10 CFR 20.1001 to 20.2402, [~~(2010)~~](2019), which are incorporated into these rules by reference, are designed to:

(a) control transfers of low-level radioactive waste by any waste generator, waste collector, or waste processor licensee, as defined in Appendix G in 10 CFR 20.1001 to 20.2402, [~~(2010)~~](2019), who ships low-level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility as defined in Section R313-25-2;

(b) establish a manifest tracking system; and

(c) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR 20.1001 to 20.2402, [~~(2010)~~](2019), which is incorporated into these rules by reference.

(3) Each shipment manifest shall include a certification by the waste generator as specified in Section II of Appendix G to 10 CFR 20.1001 to 20.2402, [~~(2010)~~](2019), which is incorporated by reference.

(4) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix G to 10 CFR 20.1001 to 20.2402, [~~(2010)~~](2019), which is incorporated by reference.

(5) A licensee shipping byproduct material as defined in paragraphs (c) and (d) of the Section R313-12-3 definition of byproduct material intended for ultimate disposal at a land disposal facility licensed under Rule R313-25 must document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer the recorded manifest information to the intended consignee in accordance with Appendix G to 10 CFR Part 20 [~~(2010 edition)~~](2019).

KEY: radioactive materials, contamination, waste disposal, safety
Date of Enactment or Last Substantive Amendment: [~~March 15, 2016~~]2020
Notice of Continuation: January 17, 2017
Authorizing, and Implemented or Interpreted Law: 19-3-104; [~~19-6-107~~]19-6-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R313-19-100**	**Filing No. 52330**

Agency Information

1. Agency:	Environmental Quality, Waste Management and Radiation Control	
Room no.:	Second Floor	
Building:	Multi-Agency State Office Building (MASOB)	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, UT 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Transportation

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

The proposed rule change updates the date of incorporation by reference of selected sections of 10 CFR Part 71 in R313-19-100 from 2014 to 2019 in order to incorporate the minor corrections to Part 71 as promulgated by the U.S. Nuclear Regulatory Commission (NRC) and published in the December 1, 2015 (80 FR 74974), November 15, 2017 (82 FR 52823), and June 28, 2018 (83 FR 30285) issues of the Federal Register. Utah's adoption of these minor corrections is required for regulatory compatibility as an Agreement State with the NRC for administering the radioactive materials program in Utah. While the changes made by the NRC are relatively minor in nature, the NRC designated the changes as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Thus, the proposed change to the date of the incorporation by reference in R313-19-100 from 2014 to 2019 incorporates minor corrections promulgated by the NRC in order to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

The proposed change in R313-19-100 revises the date of the incorporation by reference of selected sections of 10 CFR Part 71 from 2014 to 2019. This results in incorporating the changes the NRC made to selected sections of 10 CFR Part 71 and published in the Federal Register on December 1, 2015 (80 FR 74974), November 15, 2017 (82 FR 52823), and June 28, 2018 (83 FR 30285). Specifically, in the 2015 regulatory changes, the NRC replaced in the definition of "Indian Tribe" in subsection 71.4 each instance of the word "tribe" with "Tribe", and in subsection 71.97 replacing the word "tribes" with "Tribes", and each instance of the word

"tribal" with "Tribal." In the 2017 change, the NRC replaced in subsection 71.4 the reference to "25 U.S.C. 479a" with "25 U.S.C. 5130" in the definition of "Indian Tribe." In the 2018 change, the NRC replaced in subsection 71.97 the former name of the NRC's "Division of Material Safety, State, Tribal and Rulemaking Programs" with the revised name of "Division of Materials Safety, Security, State, and Tribal Programs" due to an organizational change at the NRC. As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. While the NRC changes are minor in nature, the NRC designated the changes as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Thus, the proposed change to the date of the incorporation by reference in R313-19-100 from 2014 to 2019 incorporates the minor corrections found in the appropriate sections of 10 CFR Part 71.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to the state budget or to any of the state entities that are a radioactive materials licensee.

B) Local governments:

There are fewer than five local governments that have a radioactive materials license associated with the possession and use of portable gauges. The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the local government licensees.

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

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the small business radioactive materials licensees.

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

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the non-small business radioactive materials licensees.

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 change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the other radioactive materials licensees.

F) Compliance costs for affected persons:

As minor corrections, there are no compliance costs for any of the radioactive materials licensees in Utah.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:
The interim executive director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the radioactive materials licensees.
B) Name and title of department head commenting on the fiscal impacts:
Scott Baird, 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 19-3-104	Section 19-6-104	

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Title 10 Part 71, Code of Federal Regulations, Packaging and Transportation of Radioactive Material (10 CFR Part 71)
Publisher	U.S. Government Publishing Office
Date Issued	2019
Issue, or version	January 1, 2019

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	12/31/2019
10. This rule change MAY* become effective on:	02/14/2020
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Ty Howard, Division Director	**Date:**	11/07/2019

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), 71.19(c), 71.20 through 71.23, 71.47, 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, 71.127 through 71.137, and Appendix A to Part 71 [~~(2014)~~](2019) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 71.4 the following definitions:

(i) "close reflection by water";

(ii) "licensed material";

(iii) "optimum interspersed hydrogenous moderation";

(iv) "spent nuclear fuel or spent fuel"; and

(v) "state."

(2) The substitution of the following date reference:

(a) "October 1, 2011" for "October 1, 2008".

(3) The substitution of the following rule references:

(a) "R313-36 (incorporating 10 CFR 34.31(b) by reference)" for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);

(b) "R313-15-502" for reference to "10 CFR 20.1502";

(c) "R313-14" for reference to "10 CFR Part 2 Subpart B";

(d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";

(e) "R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(f) "R313-19-100(5)" for "Sec.71.5";

(g) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H" except in 10 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b);

(h) "10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.17(c)(2), 71.20(c)(2), 71.21(d)(2), 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subparts A, G, and H of this part";

(i) "10 CFR 71.47" for "subparts E and F of this part"; and

(j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "Sec. Sec. 71.101 through 71.137."

(4) The substitution of the following terms:

(a) "Director" for:

(i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.20(a), 71.21(a), 71.22(a), 71.23(a), and 71.101(c)(1);

(ii) "Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" in 10 CFR 71.97(c)(1), and 71.97(f)(1);

(iii) "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001" in 10 CFR 71.97(c)(3)(iii);

(iv) "NRC" in 10 CFR 71.101(f);

(b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;

(c) "The Governor of Utah" for:

(i) "the governor of a State" in 71.97(a);

(ii) "each appropriate governor" in 10 CFR 71.97(c)(1);

(iii) "the governor" in 10 CFR 71.97(c)(3);

(iv) "the governor of the state" in 10 CFR 71.97(e);

(v) "the governor of each state" in 10 CFR 71.97(f)(1);

(vi) "a governor" in 10 CFR 71.97(e);

(d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);

(e) "the Governor of Utah's" for:

(i) "the governor's" in 10 CFR 71.97(a), 71.97(c)(3), 71.97(c)(3)(iii), 71.97(e), and 71.97(f)(1);

(ii) "governor's" in 10 CFR 71.97(c)(1), and 71.97(e);

(f) "Specific or general" for "NRC" in 10 CFR 71.0(c);

(g) "The Director at the address specified in R313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);

(h) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);

(i) "The material must be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);

(j) "Licensee" for "licensee, certificate holder, and applicant for a COC"; and

(k) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2009), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A (49 CFR 173.1 through 49 CFR 173.13), B (49 CFR 173.21 through 49 CFR 173.40), and I (49 CFR 173.401 through 49 CFR 173.477).

(B) Marking and labeling--49 CFR part 172: subpart D (49 CFR 172.300 through 49 CFR 172.338); and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F (49 CFR 172.500 through 49 CFR 172.560), especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C (49 CFR 172.200 through 49 CFR 172.205) and G (49 CFR 172.600 through 49 CFR 172.606).

(F) Hazardous material employee training--49 CFR part 172: subpart H (49 CFR 172.700 through 49 CFR 172.704).

(G) Security plans--49 CFR part 172: subpart I (49 CFR 172.800 through 49 CFR 172.804).

(H) Hazardous material shipper/carrier registration--49 CFR part 107: subpart G (49 CFR 107.600 through 49 CFR 107.606).

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D (49 CFR 174.1 through 49 CFR 174.86) and K (49 CFR 174.700 through 49 CFR 174.750).

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F (49 CFR 176.1 through 49 CFR 176.99) and M (49 CFR 176.700 through 49 CFR 107.720).

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to

DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, P.O. Box 144850, Salt Lake City, Utah 84114-4850.

KEY: licenses, reciprocity, transportation, exemptions
Date of Enactment or Last Substantive Amendment: [~~August 9, 2019~~]2020
Notice of Continuation: July 1, 2016
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R313-36**	**Filing No. 52331**

Agency Information

1. Agency:	Environmental Quality, Waste Management and Radiation Control
Room no.:	Second Floor
Building:	Multi-Agency State Office Building (MASOB)

Street address:	195 North 1950 West	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144880	
City, state, zip:	Salt Lake City, UT 84114-4880	
Contact person(s):		
Name:	**Phone:**	**Email:**
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Special Requirements for Industrial Radiographic Operations

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

The proposed rule change updates the date of the incorporation by reference of selected sections of 10 CFR Part 34 in R313-36-3 from 2015 to 2019 in order to incorporate the minor corrections to Part 34 as promulgated by the U.S. Nuclear Regulatory Commission (NRC) and published in the June 28, 2018 (83 FR 30285) issue of the Federal Register. Utah's adoption of these minor corrections is required for regulatory compatibility as an Agreement State with the NRC for administering the radioactive materials program in Utah. While the changes made by the NRC are relatively minor in nature, the NRC designated the changes as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Thus, the proposed change to the date of the incorporation by reference in R313-36-3 from 2015 to 2019 incorporates a minor correction promulgated by the NRC in order to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

The proposed change in R313-36-3 revises the date of the incorporation by reference of selected sections to 10 CFR Part 34 from 2015 to 2019. This results in incorporating the change the NRC made to Section 34.101 of 10 CFR Part 34 and published in the Federal Register on June 28, 2018 (83 FR 30285). Specifically, in Section 34.101, the NRC corrected the existing cross reference from 30.6(a)(2) to 30.6(b)(2). As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. While the NRC reference correction is minor in nature, the NRC designated the changes as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Thus, the proposed change to the date of the incorporation by reference in R313-36-3 from 2015 to 2019 incorporates the minor correction found in the appropriate Section 34.101 of 10 CFR Part 34.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The change in the date of the incorporation by reference results in making the noted minor reference correction for purposes of maintaining regulatory compatibility with the NRC. As a minor correction, there is no fiscal impact to the state budget or to any of the state entities that are radioactive materials licensee.

B) Local governments:

There are fewer than five local governments that have a radioactive materials license associated with the possession and use of portable gauges, and does not include industrial radiographic operations. The change in the date of the incorporation by reference results in making the noted minor correction for purposes of maintaining regulatory compatibility with the NRC. As a minor correction, there is no fiscal impact to any of the local government licensees.

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

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As a minor correction, there is no fiscal impact to any of the small business radioactive materials licensees.

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

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As minor corrections, there is no fiscal impact to any of the non-small business radioactive materials licensees.

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 change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As a minor correction, there is no fiscal impact to any of the other radioactive materials licensees.

F) Compliance costs for affected persons:

As a minor reference correction, there are no compliance costs for any of the radioactive materials licensees in Utah.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The interim executive director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.

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

The change in the date of the incorporation by reference results in making the noted minor corrections for purposes of maintaining regulatory compatibility with the NRC. As a minor reference correction, there is no fiscal impact to any of the radioactive materials licensees.

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

Scott Baird, 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 19-3-104	Section 19-6-104	

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Title 10 Part 34, Code of Federal Regulations, Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations (10 CFR Part 34)
Publisher	U.S. Government Publishing Office
Date Issued	2019
Issue, or version	January 1, 2019

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	02/14/2020

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

Agency Authorization Information

Agency head or designee, and title:	Ty Howard, Division Director	**Date:**	11/07/2019

R313. Environmental Quality, Radiation Control.
R313-36. Special Requirements for Industrial Radiographic Operations.
R313-36-1. Purpose and Authority.

(1) The rules in R313-36 prescribe requirements for the issuance of licenses and establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

(3) The requirements of R313-36 are in addition to, and not in substitution for, the other requirements of these rules.

R313-36-2. Scope.

(1) The requirements of R313-36 shall apply to licensees using radioactive materials to perform industrial radiography.

(2) The requirements of R313-36 shall not apply to persons using electronic sources of radiation to conduct industrial radiography.

R313-36-3. Clarifications or Exceptions.

For purposes of R313-36, 10 CFR 34.3; 34.13; 34.20(a)(1); 34.20(b) through 34.41(b); 34.42(a) through 34.42(c); 34.43(a)(1); 34.43(b) through 34.45(a)(8); 34.45(a)(10) through 34.101 [~~(2015)~~](2019), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 34.3, exclude definitions for "Lay-barge radiography," "Offshore platform radiography," and "Underwater radiography";

(b) In 10 CFR 34.27(d), exclude "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation.""; and

(c) In 10 CFR 34.27(e), exclude "Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph."

(2) The substitution of the following wording:

(a) "radioactive materials" for references to "byproduct materials";

(b) "Utah Radiation Control Rules" for references to:

(i) "Commission's regulations";

(ii) "Federal regulations";

(iii) "NRC regulations"; and

(iv) "Commission regulations.";

(c) "Director" for references to:

(i) "Commission";

(ii) "appropriate NRC regional office listed in Section 30.6(a)(2)";

(iii) "Director, Office of Federal and State Materials and Environmental Management Programs" except as used in 10 CFR 34.43(a)(1); and

(iv) "NRC's Office of Federal and State Materials and Environmental Management Programs";

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to:

(i) "NRC or an Agreement State"; and

(ii) "Commission or an Agreement State";

(e) "Director, the U.S. Nuclear Regulatory Commission, or by an Agreement State" for references to "Commission or by an Agreement State";

(f) "License(s)" for references to "NRC license(s)";

(g) "NRC or Agreement State License" for references to "Agreement State license"; and

(h) "the Utah Radiation Control Rules" for references to "this chapter, such as Section 21.21."

(3) The substitution of the following rule references:

(a) In 10 CFR 34.51, "R313-12" for references to "10 CFR part 20 of this chapter";

(b) "R313-15" for references to "10 CFR part 20" and "10 CFR part 20 of this chapter" except as found in 10 CFR 34.51;

(c) "R313-15-601(1)(a)" for references to "Section 20.1601(a)(1) of this chapter";

(d) "R313-15-902(1) and (2)" for references to "10 CFR 20.1902(a) and (b) of this chapter";

(e) "R313-15-903" for references to "Section 20.1903 of this chapter";

(f) "R313-15-1203" for references to "10 CFR 20.2203" and "Section 20.2203 of this chapter";

(g) "R313-12-110" for references to "Section 30.6(a) of this chapter" except as used in 10 CFR 34.43(a)(1);

(h) "R313-19-30" for references to "Section 150.20 of this chapter";

(i) "R313-19-50" for references to "Section 30.50";

(j) "R313-19-100" for references to "10 CFR part 71", and "49 CFR parts 171 - 173";

(k) "R313-22-33" for references to "Section 30.33 of this chapter";

(l) "R313-36" for references to "NRC regulations contained in this part";

(m) "R313-19-100(5)" for references to "Section 71.5 of this chapter"

(n) "R313-19-5" for references to "Sections 30.7, 30.9, and 30.10 of this chapter."

KEY: industry, radioactive material, licensing, surveys
Date of Enactment or Last Substantive Amendment: [~~June 16, 2015~~]2020
Notice of Continuation: July 1, 2016
Authorizing, and Implemented or Interpreted Law: 19-3-104; [~~19-6-107~~]19-6-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R386-900**	**Filing No. 52320**

Agency Information

1. Agency:	Utah Department of Health, Disease Control and Prevention, Epidemiology	
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amelia Self	801-538-6221	aself@utah.gov

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

General Information

2. Rule or section catchline:

Special Measures for the Operation of Syringe Exchange Programs

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

This amendment clarifies additional information and expectations of syringe exchange providers.

4. Summary of the new rule or change:

These changes provide more extensive and specific definition of syringe exchange, provide additional clarification regarding the requirements for operating entities to enter into a provider agreement with the Utah Department of Health and comply with the Utah Syringe

Exchange Program Handbook. Additionally, clarification is added regarding data collection and confidentiality.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enacting the proposed changes to Rule R386-900 will not result in a cost or benefit to the state budget because the proposed rule changes do not require a change to current state operations or programs, and do not include requirements for the payment of fines or fees.

B) Local governments:

Enacting the proposed changes to Rule R386-900 will not result in a cost or benefit to local governments because the proposed rule changes do not require a change to current local operations or programs, and do not include requirements for the payment of fines or fees.

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

Enacting the proposed changes to Rule R386-900 will not result in a cost or benefit to small businesses because the proposed rule changes do not require a change to current small businesses operations or programs, and do not include requirements for the payment of fines or fees.

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

Enacting the proposed changes to Rule R386-900 will not result in a cost or benefit to non-small businesses because the proposed rule changes do not require a change to current programs, and do not include requirements for the payment of fines or fees.

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***)**:**

Enacting the proposed changes to Rule R386-900 will not result in a cost or benefit to other persons because the proposed rule changes do not require a change to current programs, and do not include requirements for the payment of fines or fees.

F) Compliance costs for affected persons:

These revisions provide more extensive and specific definition of syringe exchange and clarification and does not add additional requirements to impact 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**

Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:
The head of the Department of Health, Joseph Miner, MD, 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 amendment is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures. There are no non-small businesses currently operating as Syringe Service Providers.
B) Name and title of department head commenting on the fiscal impacts:
Joseph Miner, MD, 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 26-7-8		

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the following title of materials incorporated by references :	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Department of Health and Human Services Implementation Guidance to Support Certain Components of Syringe Services Programs, 2016
Publisher	Department of Health and Human Services
Date Issued	3/8/2016
Issue, or version	1

B) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	"Syringe Services Program (SSP) Development and Implementation Guidelines for State and Local Health Departments"
Publisher	National Alliance of State and Territorial AIDS Directors
Date Issued	2012
Issue, or version	1

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2019
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	**Date:**	11/04/2019

R386. Health, Disease Control and Prevention, Epidemiology.
R386-900. Special Measures for the Operation of Syringe Exchange Programs.
R386-900-1. Authority.

This rule is authorized under Utah Code 26-7-8.

R386-900-2. Purpose.

This rule establishes operating and reporting requirements required of an entity operating a syringe exchange program pursuant to 26-7-8.

R386-900-3. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health Bureau of Epidemiology Prevention, Treatment and Care Program.

(2) "Syringe exchange program" [~~is defined in 26-7-8.~~]is a program that provides access to sterile syringes other clean and new prevention materials, including, but not limited to, cotton filters, cookers, tourniquets, alcohol swabs, and/or condoms and collects, properly disposes of, used syringes, and provides information and referrals and other services as identified by population and community needs to reduce the harms associated with injection drug use; consistent with;

(a) the "Department of Health and Human Services Implementation Guidance to Support Certain Components of Syringe Services Programs, 2016" HHS 3/29/2016, and

(b) the CDC Syringe Services Programs standards and definitions.

(3) "Operating entity" is defined in 26-7-8.

(4) "HIV" means human immunodeficiency virus.

(5) "HCV" means hepatitis C virus.

(6) "HBV" means hepatitis B virus.

(7) "Opiate antagonist" is defined by Chapter 55, Opiate Overdose Response Act.

R386-900-4. Operating Requirements.

(1) An operating entity intending to begin syringe exchange programming within a local community shall meet with local stakeholders, which should include: public health, mental health, substance abuse, law enforcement, local governing body, community councils, etc. This meeting should provide education on the purpose and goals of a syringe exchange program, syringe exchange protocols, awareness of operating entity's plans and community partnerships and will assess community readiness, norms, needs and parameters for implementing syringe exchange in that area. The operating entity shall provide UDOH meeting summary(s) which should include: participants, what was discussed, outcomes and plans for implementation. This documentation must be submitted for each major area where exchange will be conducted upon enrollment and submitted 30 days prior to the initiation of syringe exchange program operation in a new area.

(2) An operating entity shall utilize the department's enrollment form to provide written notice of intent to conduct syringe exchange activities to the department 15 days prior to conducting syringe exchange activities. If an operating entity discontinues syringe exchange activities, written notice shall also be submitted utilizing the department's report form within 15 days of termination of activities to the department.

(3) An operating entity must submit a safety protocol to the department for the prevention of [~~needlestick~~]needle stick and sharps injury before initiating syringe exchange activities.

(4) An operating entity shall submit a sharps disposal plan to the department for each county in which services will be offered. Sharps disposal is the financial responsibility of the entity operating and responsible for the syringe exchange program.

(5) An operating entity shall agree to and sign the department's "Utah Syringe Exchange Provider Agreement" upon enrollment, which indicates they have read and understood the requirements outlined in this rule as well as the "Utah Syringe Exchange Program Handbook."

(6) An operating entity shall facilitate the exchange of an [~~individuals~~]individual's used syringes by providing a disposable, medical grade sharps container for the disposal of used syringes.

([6]7) The operating entity shall exchange one or more new syringes in sealed sterile packages and may provide other clean and new prevention materials to the individual free of charge.

([~~7~~]8) As available, the department will provide syringes, prevention materials, education materials, and other resources to entities operating a syringe exchange program.

([~~8~~]9) An operating entity must provide and make available to all clients of the syringe exchange program verbal and written instruction on:

(a) Methods for preventing the transmission of blood borne pathogens, including HIV, HBV and HCV;

(b) Information and referral to drug and alcohol treatment;

(c) Information and referral for HIV and HCV testing; and

(d) How and where to obtain an opiate antagonist.

(10) The Department incorporates by reference the "Guide to Developing and Managing Syringe Access Programs", Harm Reduction Coalition, 2010

(11) The Department incorporates by reference the "Syringe Services Program (SSP) Development and Implementation Guidelines for State and Local Health Departments" National Alliance of State & Territorial AIDS Directors, 2012

R386-900-5. Reporting Requirements.

(1) All entities operating a syringe exchange program shall report aggregate data elements in accordance to 26-7-8 to the department on a quarterly basis, utilizing the format provided by the department which is to include:

(a) Number of individuals who have exchanged syringes,

(b) A self-reported or approximated number of used syringes exchanged for new syringes,

(c) Number of new syringes provided in exchange for used syringes,

(d) Educational materials distributed; and

(e) Number of referrals provided.

R386-900-6. Confidentiality of Reports.

(1) The department may collect and maintain data on syringe exchange programs and syringe exchange program clients as provided by Section 26-3-2. All information collected pursuant to this rule shall not be released or made public, except as provided by Section 26-3-7 and Section 26-3-8.

R386-900-[6]7. Penalty.

(1) Any person who violates any provision of R386-900 may be assessed a penalty as provided in section 26-23-6.

R386-900-[7]8. Official References.

(1) Centers for Disease Control and Prevention (CDC), 2016, Program Guidance for Implementing Certain Components of Syringe Services Programs.

(2) Federal Register, Health and Human Services Department, 2011, Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users.

(3) Harm Reduction Coalition, 2006, Syringe Exchange Programs and Hepatitis C.

(4) Harm Reduction Coalition, 2006, Syringe Exchange Programs: Reducing the Risks of [~~Needlestick~~]Needle stick Injuries.

(5) Substance Abuse and Mental Health Services Administration (SAMHSA), Summary of Syringe Exchange Program Studies.

(6) United States Department of Health and Human Services (HHS), 2016, Implementation Guidance to Support Certain Components of Syringe Services Programs.

(7) World Health Organization (WHO), 2004, Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users.

KEY: syringe exchange programs, needles, syringes
Date of Enactment or Last Substantive Amendment: [~~May 15, 2019~~]2020
Authorizing, and Implemented or Interpreted Law: 26-7-8

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R388-804**	**Filing No. 52332**

Agency Information

1. Agency:	Utah Department of Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health	
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state:	SLC, UT 84116	
Mailing address:	PO Box 142102	
City, state, zip:	Salt Lake City, UT 84114-2102	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amelia Self	801-538-6221	aself@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Special Measures for the Control of Tuberculosis

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

This amendment updates incorporated references, clarifies definitions and screening procedures, and makes minor grammatical fixes.

4. Summary of the new rule or change:

This amendment clarifies and expands the definitions for suspect cases and individuals who may be affected by this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This amendment has no anticipated costs to the budget as the amendment does not impact changes in the TB Program administration or TB screening or treatment requirements.

B) Local governments:

This amendment has no anticipated cost to local governments. Local health departments receive contractual funds from the TB Program to conduct case management services.

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

This amendment has no anticipated cost to small businesses as they have no interaction with the TB Program.

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

This amendment has no anticipated cost to non-small businesses as they have no interaction with the TB Program.

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

This amendment has no anticipated cost to businesses, individuals, local governments, and persons that are not small businesses. Local health departments are contracted to provide TB services to identified individuals. This amendment provides additional clarification that addresses behavior that is already protocol but does not require actions that require monetary outlay.

F) Compliance costs for affected persons:

This amendment has no anticipated compliance related 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0

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

H) Department head sign-off on regulatory impact:

The head of the Department of Health, Joseph Miner, MD, 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 amendment is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures. This amendment does not add or remove any requirements for non-small businesses, merely clarifies existing definitions. The changes update incorporated references, clarifies definitions and screening procedures, and corrects grammatical errors.

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

Joseph Miner, MD, 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 26-6-4	Section 26-6-6	Section 23-6-7
Section 26-6-8	Section 26-6-9	Title 23, Chapter 6b

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Availability of an Assay for Detecting Mycobacterium tuberculosis, Including Rifampin-Resistant Strains, and Considerations for Its Use – United States, 2013
Publisher	Center for Disease Control and Prevention
Date Issued	October 18, 2013
Issue, or version	62(41);821-824

B) This rule adds, updates, or removes the following title of materials incorporated by references :

	Second Incorporation
Official Title of Materials Incorporated (from title page)	Official American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis
Publisher	Infectious Diseases Society of American
Date Issued	August 10, 2016

C) This rule adds, updates, or removes the following title of materials incorporated by references :

	Third Incorporation
Official Title of Materials Incorporated (from title page)	Consensus statement on the use of Cepheid Xpert MTB/RIF assay in making decisions to discontinue airborne infection isolation in healthcare settings
Publisher	National Tuberculosis Controllers Association/Association of Public Health Laboratories
Date Issued	April 1, 2016

D) This rule adds, updates, or removes the following title of materials incorporated by references :

	Fourth Incorporation
Official Title of Materials Incorporated (from title page)	Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis
Publisher	Centers for Disease Control and Prevention
Date Issued	January 16, 2009
Issue, or version	58(01);7-10

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	**Date:**	11/15/2019

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-804. Special Measures for the Control of Tuberculosis.
R388-804-1. Authority and Purpose.

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

R388-804-2. Definitions.

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by Mycobacterium tuberculosis complex, i.e., Mycobacterium tuberculosis, Mycobacterium bovis, or Mycobacterium africanum.

(b) Acid-fast bacilli (AFB). Denotes bacteria that are not decolorized by acid-alcohol after having been stained with dyes such as basic fuschsin; e.g., the mycobacteria and nocardiae.

(c) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the National Notifiable Diseases Surveillance System (NNDSS). The Department incorporates by reference the Tuberculosis 2009 Case Definition, CSTE (Council of State and Territorial Epidemiologists) Position Statement, 09-ID-65.

(d) Tuberculosis infection. The presence of M. tuberculosis in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, or Interferon Gamma Release Assay (IGRA), e.g. Quantiferon or T-SPOT, a negative chest radiograph and the absence of clinical signs and symptoms.

(e) Tuberculosis disease. A state of active tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(f) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(g)Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drugs[~~drug~~].

(h) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(i) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a person with signs and symptoms consistent with tuberculosis, having AFB recovered from sputum or any other source with identification pending, or started on a regimen consistent with treatment for active tuberculosis disease as described in references a & b in R388-804-6(1).[~~a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.~~]

(j) Program. Utah Department of Health: Bureau of Epidemiology; Prevention, Treatment, and Care Program.

(k) Department. Utah Department of Health.

R388-804-3. Required Reporting.

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect and confirmed cases within 72 hours of report.

R388-804-4. Screening Priorities and Procedures.

(1) Private providers and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

(a) Close contacts of those with infectious tuberculosis;

(b) Persons infected with human immunodeficiency virus;

(c) Individuals who inject illicit drugs;

(d) Inmates of adult and youth correctional facilities;

(e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;

(f) [~~Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;~~]Temporary or permanent residence (>= 1 month) in a country with a high TB rate (any country except the U.S., Canada, Australia, New Zealand, countries in western and northern Europe);

(g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) [~~Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;~~]Individuals who have travelled for >= 1 month in a country with a high TB rate (any country except the U.S., Canada, Australia, New Zealand, countries in western and northern Europe);

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening shall be completed using either the Mantoux tuberculin skin test method or an FDA approved in-vitro serologic test, e.g. IGRA.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test or serologic test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

R388-804-5. Diagnostic Criteria.

In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

(1) The Department incorporates by reference the (IDSA/ATS/CDC) diagnostic and classification standards as described in the segment entitled "Clinical Practice Guidelines: Diagnosis of Tuberculosis in Adults and Children," Clinical Infectious Diseases (2016) doi: 10.1093/cid/ciw694 First published online: December 8, 2016.

(2) [~~The Department incorporates by reference the CDC diagnostic and classification standards for use of Nucleic Acid Amplification test in the document entitled "Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis," MMWR; 58 (01); 7-10, 2010.~~]The Department incorporates by reference: a) "Centers for Disease Control and Prevention. Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis," MMWR 2009; 58 (01); 7-10, b) "Centers for Disease Control and Prevention. Availability of an Assay for Detecting Mycobacterium tuberculosis, Including Rifampin-Resistant Strains, and Considerations for Its Use -- United States, 2013." MMWR 2013; 62 (41), and c) National Tuberculosis Controllers Association/Association of Public Health Laboratories. "Consensus statement on the use of Cepheid Xpert MTB/RIF assay in making decisions to discontinue airborne infection isolation in healthcare settings." April 2016

(3) The Department incorporates by reference the CDC diagnostic and classification standards for use of Interferon Gamma Release Assays as described in the document entitled, "Updated Guidelines for Using Interferon Gamma Release Assays to Detect Mycobacterium tuberculosis Infection, United States, 2010" MMWR; 59 (no. RR-5); 1-25, 2010.

R388-804-6. Treatment and Control.

(1) The Department incorporates by reference the IDSA/ATS/CDC treatment standards as described in the segment entitled a) "Infectious Diseases Society of America. Official ATS/CDC/IDSA Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis". Clinical Infectious Diseases (2016) doi: 10.1093/cid/ciw376, August 10, 2016[~~,~~]; b) "Centers for Disease Control and Prevention. Treatment of Tuberculosis, American Thoracic Society, CDC, and Infectious Diseases Society of America." MMWR 2003; 52 (No. RR-11)[~~,~~]; c) Centers for Disease Control and Prevention. Controlling Tuberculosis in the United States: Recommendations from the American Thoracic Society; CDC, and the Infectious Diseases Society of America. MMWR 2005; 54 (No. RR-12)" and "Centers for Disease Control and Prevention. Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." MMWR 2000; 49 (No. RR-6).[~~"~~]

(2) A health-care provider who treats an individual with tuberculosis disease shall use the IDSA/ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individual's adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program. Discharge from an inpatient facility shall not occur without the knowledge of, and in agreement with the local health department and/or the Program.

(3) A health-care provider who treats an individual with suspect or active tuberculosis disease shall provide for directly observed therapy.

(4) Individuals with infectious tuberculosis disease shall comply with the treatment plan as set forth by the provider and public health, including but not limited to isolation if necessary, wearing a mask approved by the local health department or the Program when outside the isolation area, abiding by a plan of directly observed therapy, providing laboratory samples, and attending all scheduled provider visits.

(5) Any individual who does not comply with R388-804-6 (4)[~~will not comply with public health~~] shall be subject to involuntary isolation as [~~establish~~]established in the Utah Communicable Disease Control Act.

R388-804-7. Epidemiologic Investigations.

(1) The local health department shall conduct a contact investigation immediately upon report of an AFB smear positive suspected or confirmed case of laryngeal, respiratory, or pleural tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis.

(a) The investigation shall begin within three days of notification of an AFB smear positive suspected or confirmed case and the initial evaluation shall be completed within fourteen days of notification.

(b) Investigations of contacts to persons with active TB disease shall include the evaluation of contacts and the treatment of infected contacts.

(c) The local health department shall submit demographic data to the Department at 30 days and at 120 days after initiation of the contact investigation, and following the completion of prophylactic treatment.

R388-804-8. Payment for Isolation and Quarantine.

(1) Individuals who are isolated or quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with isolation or quarantine is available.

R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable diseases
Date of Enactment or Last Substantive Amendment: [~~May 11, 2017~~]2020
Notice of Continuation: September 30, 2016
Authorizing, and Implemented or Interpreted Law: 26-6-4; 26-6-6; 26-6-7; 26-6-8; 26-6-9; 26-6b

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R392-302**	**Filing No. 52333**

Agency Information

1. Agency:	Utah Department of Health, Disease Control and Prevention, Environmental Services	
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state:	SLC, UT 84116	
Mailing address:	PO Box 142102	
City, state, zip:	Salt Lake City, UT. 84114-2102	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Nelson	801-538-6739	chrisnelson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Design, Construction and Operation of Public Pools

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

The Utah Department of Health's Swimming Pool Advisory Committee has recommended these changes to be more inline with current national practices and standards; clarify confusing language; meet the requests of operators and owners and allow flexibility in design and construction; address needed safety and sanitation changes; and update standards references. Of note is the requirement to interlock chemical feed systems, regardless of grandfather status, due to the increased instances of chlorine releases resulting in hospitalizations attributed to faulty circulation and chemical feed systems.

4. Summary of the new rule or change:

Fixes to language incorporating by reference for multiple standards include:

In Section R392-302-6, updates the standard reference for prefabricated pools.

In Section R392-302-10, clarifies and updates language for wall verticality and transitions to more closely match the Model Aquatic Health Code (MAHC) and International Swimming Pool and Spa Code (ISPSC) recommendations.

In Section R392-302-11, expands what standards may be used in designing diving areas.

In Section R392-302-14, allows for gates from clubhouses to swing inwards to accommodate fire egress rules; allows for operators to not need a gate entrance be locked at all times if the pool is guarded or the entrance is controlled/staffed at all times.

In Section R392-302-16, clarifies variable speed pumps are allowed as long as the total daily turnover times matches the original approved and designed turnover rates.

In Sections R392-302-16 and R392-302-21, removes grandfather status for interlock devices. All pools must comply by January 31, 2021.

In Section R392-302-17, allows for adjustable inlets.
In Section R392-302-22, allows for substituting of shepherd crook or life pole for a rescue tube.

In Section R392-302- 23, updates standard reference which ventilation systems must meet.

In Section R392-302-24, removes requirement for gender specific dressing rooms.

In Section R392-302-25, makes clear restrooms are required within a certain distance of the pool area; allows for flexibility in the number of restroom fixtures and allows for unisex facilities.

In Table 6, removes reference to hydrogen peroxide/UV combination as a primary disinfectant.

In Section R392-302- 31, makes clear and matches requirement in 2017 NEC for spas to have an emergency shutoff switch; requires this switch to have an audible alarm at non-lifeguarded pools.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enacting the proposed changes to Rule R392-302 will not result in a cost or benefit to the state budget because the proposed rule does not require a change to current state operations or programs.

B) Local governments:

Enacting the proposed changes to Rule R392-302 will not result in a direct cost or benefit to local health departments because the proposed rule does not require a change to current operation or programs.

The proposed changes to Rule R392-302 will likely result in a cost to those municipal pool facilities not currently in compliance with Subsection R392-302-21(7), interlocking chemical feeds with the circulation pump. It was reported in FY19 an estimated 164 municipal pool facilities were permitted as public pools. Due to the wide variety of ways to meet this requirement the cost is estimated to be $250 - $700 per circulation pump, averaged to $475, per facility not currently in compliance with the interlock requirement. An estimated 13% of municipal pool facilities may need to make changes, resulting in an approximate total cost of $10,127.

Other rule changes are not expected to result in a direct cost to local governments because there are no other required construction, equipment, or operational changes for existing local governments. Possible intangible benefits may apply due to more flexible requirements in design and construction.

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

Enacting the proposed changes to Rule R392-302 will likely result in a cost to those small businesses not currently in compliance with Subsection R392-302-21(7), interlocking chemical feeds with the circulation pump. It was reported in FY19 an estimated 3,254 facilities permitted as public pools, with 3,243 possibly being affected by these rule changes, of which an estimated 2,859 are considered small businesses. Affected industries include contractors, engineers, and multiple types of operators and maintenance companies. Also affected will be those businesses which own or operate a public pool, including hotels, apartments, amusement parks, HOAs, schools, municipalities, and fitness centers. The Department can be contacted for a full list of NAICS codes. Due to the wide variety of ways to meet this requirement the cost is estimated to be $250 - $700 per circulation pump, averaged to $475, per facility not currently in compliance with the interlock requirement. An estimated 13% of small businesses may need to make changes, resulting in an approximate total cost of $176,543.

Other rule changes are not expected to result in a direct cost to small business because there are no other required construction, equipment, or operational changes for existing businesses. Possible intangible benefits may apply due to more flexible requirements in design and construction.

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

It was reported in FY19 an estimated 3,254 facilities permitted as public pools, with 3,243 possibly being affected by this rule change, of which an estimated 220 are considered non-small businesses. An estimated 13% of these may need to come into compliance with R392-302-21(7), interlocking circulation pumps with chemical feed systems. Affected industries include contractors, engineers, and multiple types of operators and maintenance companies. Also affected will be those businesses which own or operate a public pool, including hotels, apartments, amusement parks, HOAs, schools, municipalities, and fitness centers. The Department can be contacted for a full list of NAICS codes. Due to the wide variety of ways to meet this requirement the cost is estimated to be $250 - $700 per circulation pump, averaged to $475, per facility not currently in compliance with Subsection R392-302-21(7). The total cost for non-small business is estimated to be $13,585. Facilities have until January 31, 2021, to make these changes.

Other rule changes are not expected to result in a direct cost to non-small business because there are no other required construction, equipment, or operational changes for existing businesses. Possible intangible benefits may apply due to more flexible requirements in design and construction.

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***)**:**

Enacting the proposed changes to Rule R392-302 will not result in a direct cost or benefit to any one specific person, as defined, because no additional construction, equipment, or operational requirements are included in this rule change specific to any one person.

F) Compliance costs for affected persons:

Affected persons are as follows:
State: Utah Department of Health. There are no compliance costs associated with this rule change for state entities.
Local Government: 13 local health departments. There are no compliance costs associated with these rule changes for local health departments. Municipal run public pools may be affected.
Small business: All public pool facilities, as defined, including schools, universities, apartments, HOAs, fitness centers, amusement parks, municipalities, and hotels. Compliance costs will result from complying with the requirement to interlock circulation systems with chemical feed systems by January 31, 2021. An estimated 13% of small businesses with pools may be affected.
Persons: No specific person will be affected by this rule. There are no compliance costs associated with these rule changes for any one specific person.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$10,127	$0	$0
Small Businesses	$176,542	$0	$0
Non-Small Businesses	$13,585	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$200,255**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**-$200,285**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Executive Director of the Department of Health, Joseph Miner, MD, has reviewed and approved this fiscal analysis.

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

These rule changes may have a fiscal impact on businesses who are involved in bringing the facilities up to national standards.

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

Joseph Miner, MD, 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 26-15-2	Section 26-7-1
Subsection 26-1-30(23)	Subsection 26-1-30(9)	

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	IAPMO/ANSI Z 124.7-2013
Publisher	International Association of Plumbing and Mechanical Officials
Date Issued	2013
Issue, or version	2013

B) This rule adds, updates, or removes the following title of materials incorporated by references :

	Second Incorporation
Official Title of Materials Incorporated (from title page)	IAPMO IGC 158-2000
Publisher	International Association of Plumbing and Mechanical Officials
Date Issued	2000
Issue, or version	2000

C) This rule adds, updates, or removes the following title of materials incorporated by references :

	Third Incorporation
Official Title of Materials Incorporated (from title page)	ISO 19712-1:2008 - Plastics – Decorative solid surfacing materials – Part 1: Classification and Specifications
Publisher	ISO
Date Issued	2008
Issue, or version	2008

D) This rule adds, updates, or removes the following title of materials incorporated by references :

	Fourth Incorporation
Official Title of Materials Incorporated (from title page)	2015-2017 USA Diving Official Technical Rules, Appendix B – FINA Dimensions for Diving Facilities
Publisher	USA Diving
Date Issued	2015
Issue, or version	2015-2017

E) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Fifth Incorporation
Official Title of Materials Incorporated (from title page)	Rule 1, Section 1, Article 4 and Rule 1, Section 2, Article 4 of NCAA Men's and Women's Swimming and Diving 2014-2015 Rules and Interpretations
Publisher	NCAA
Date Issued	2014-2015
Issue, or version	2014-2015

F) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Sixth Incorporation
Official Title of Materials Incorporated (from title page)	2018 Model Aquatic Health Code Table 4.8.2.2, Figure 4.8.2.2.1, Figure 4.8.2.2.2
Publisher	CDC
Date Issued	2018
Issue, or version	2018

G) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Seventh Incorporation
Official Title of Materials Incorporated (from title page)	2018 International Swimming Pool and Spa Code, Section 402.12, Table 402.12, and Figure 402.12
Publisher	International Code Council
Date Issued	2018
Issue, or version	2018

H) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Eighth Incorporation
Official Title of Materials Incorporated (from title page)	NSF/ANSI 50-2015
Publisher	NSF
Date Issued	2015
Issue, or version	2015

I) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Ninth Incorporation
Official Title of Materials Incorporated (from title page)	ASHRAE Standard 62.1-2016
Publisher	American Society of Heating, Refrigeration and Air-Conditioning Engineers
Date Issued	2016
Issue, or version	2016

J) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Tenth Incorporation
Official Title of Materials Incorporated (from title page)	ANSI Z535.2-2011
Publisher	American National Standard for Environmental and Facility Safety Signs
Date Issued	2011
Issue, or version	2011

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:	01/14/2020

10. This rule change MAY* become effective on:	01/14/2020

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

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	**Date:**	11/15/2019

R392. Health, Disease Control and Prevention, Environmental Services.
R392-302. Design, Construction and Operation of Public Pools.
R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Sections 26-1-5, 26-1-30(9) and (23), 26-7-1, and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "AED" means automated external defibrillator.

(2) "Backwash" means the process of cleaning a swimming pool filter by reversing the flow of water through the filter.

(3) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(4) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(5) "Collection Zone" means the area of an interactive water feature where water from the feature will be collected and drained for treatment.

(6) "CPR" means Cardiopulmonary Resuscitation.

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

(8) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(9) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(10) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.

(11) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.

(12) "High Bather Load" means 90% or greater of the designed maximum bather load."

(13) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(14) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(15) "Instructional Pool" means a pool used solely for purposes of providing water safety and survival instruction taught by a certified instructor. Instructional pools do not include private residential pools. Private residential pools used for swim instruction shall not be considered instructional pools as defined in this rule.

(16) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.

(17) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(18) "Lifeguard" means an attendant who supervises the safety of bathers.

(19) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(20) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(21) "Onsite Septic System" means an approved onsite waste water system designed, constructed, and operated in accordance with Rule 317-4.

(22) "Pool" means a man-made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(23) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(24) "Pool Shell" means the rigid encasing structure of a pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.

(25) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(26) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.

(27) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(28) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(29) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(30) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(31) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(32) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(33) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(34) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(35) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.

(36) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(37) "Waste Water" means discharges of pool water resulting from pool drainage or backwash.

(38) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.

(4) This rule does not regulate float tanks.

(5) All public pools shall meet the requirements of this rule unless otherwise specified in R392-302.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap or a backflow preventer in accordance with the International Plumbing Code as incorporated and amended in Title 15a, State Construction and Fire Codes Act.

(a) The backflow preventer must protect against contamination, backsiphonage and backpressure.

(b) Water supply lines protected by a backflow prevention device shall not connect to the pool recirculation system on the discharge side of the pool recirculation pump.

R392-302-5. Waste Water.

(1) Each public pool must connect to a public sanitary sewer or an onsite septic system.

(a) Each public pool must connect to a sanitary sewer or onsite septic system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall be connected through an air gap.

(2) Each public pool shall discharge waste water:

(a) to a public sanitary sewer system when available within 300 feet of the property line with authorization by the local sanitary sewer authority; or

(b) to an onsite septic system when public sanitary sewer system is not within 300 feet of the property line or authorization is not available; or

(c) in accordance with Subsection R392-302-5(4) and Subsection R392-302-5(5) except for any public pool utilizing salt in the pool water.

(i) Public pools utilizing salt in the pool water shall only discharge waste water to a public sanitary sewer system or an onsite septic system which has been designed for such.

(3) A public pool shall not discharge waste water directly to storm sewers or surface waters.

(4) Except for pools utilizing salt in the pool water, a public pool may discharge waste water that is not backwash according to Subsection R392-302-5(5) if:

(a) a public sanitary sewer is not available within 300 feet of a property line or authorization to discharge to a sanitary sewer is not available; and

(b) an onsite septic system is not available or designed for the discharge amount.

(5) If a public pool meets the criteria of Subsection R392-302-5(4), the public pool shall reduce the disinfectant level to less than one part per million and:

(a) may discharge as irrigation in an area where the water will not flow into a storm drain or surface water; or

(b) may discharge on the facility's property as long as it does not flow off the property.

(6) Public pools shall not discharge waste water in a manner that will create a nuisance condition.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell shall have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.

(3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.

(4) In addition to the requirements of R392-302-6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-2013, which is incorporated by reference;

(b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard, which is incorporated by reference;

(c) for pools built with prefabricated pool sections or pool members, [~~the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001~~]ISO 19712-1:2008 - Plastics -- Decorative solid surfacing materials -- Part 1: Classification and specifications, which is incorporated by reference; or

(d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this section R392-302-6.

(5) The pool shell surface must be of a white or light pastel color.

R392-302-7. Bather Load.

(1) The bather load capacity of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in an indoor swimming pool during maximum load.

(c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.

(d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.

(2) The Department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) No new pool construction or modification project of an existing pool shall begin until the requirements of Subsection R392-302-8(6) have been met.

(6) The pool owner or designee shall submit a set of plans for a new pool or modification project of an existing pool to the local health department. This includes the replacement of equipment which is different from that originally approved by the local health department.

(a) The set of plans shall have sufficient details to address all applicable requirements of R392-302 and shall bear a stamp from an engineer licensed in the State of Utah.

(b) The local health department may exempt the pool owner from Subsection R392-302-8(6) for a modification of an existing pool if health and safety are not compromised.

(c) The set of plans shall be initially reviewed by the local health department and a letter of review sent by the local health department to the submitter, pool owner, or designee within 30 days of submittal.

(d) The pool owner shall make required changes to the plans to meet the local health department's review criteria.

(7) All manufactured components of the pool shall be installed as per manufacturer's recommendations.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

R392-302-10. Walls.

(1) Pool walls must be vertical or within [~~11~~]plus three degrees of vertical[~~ for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line~~] to a depth of at least two feet and nine inches.

[~~(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:~~

~~(a) have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters;~~

~~(b) have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less;~~

~~(c) be tangent to the wall;~~

~~(d) have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters; and~~

~~(e) have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.~~

](2) Walls shall transition from wall to floor using a radius or an angle.

(3) When a radius is used as the transition from wall to floor, the radius shall meet the following requirements:

(a) At water depths of 3 ft. or less, a transitional radius from wall to floor shall not exceed 6 in. and shall be tangent to the wall and may be tangent to or intersect the floor.

(b) At water depth between 3 ft. to 5 ft. the maximum transitional radius from wall to floor shall be determined by calculating the radius as it varies progressively from a maximum 6 inch radius at a 3 foot depth to a maximum of 2 feet radius at 5 feet of depth.

(c) At water depth greater than 5 feet the maximum transitional radius from wall to floor shall be equivalent to the water depth of the pool less 3 feet.

(4) When an angle is used as the transition from wall to floor, the angle shall meet the following requirements:

(a) At water depths of 3 ft. or less, a transitional angle from wall to floor shall start maximum 3 inches above the floor and shall intersect the floor at an angle equal to or steeper than 45 degrees from horizontal.

(b) At water depth between 3 ft. to 5 ft. the transitional angle from wall to floor shall vary progressively starting at a maximum of 3 inches above the floor at a 3 foot depth to a maximum of 18 inches above the floor at the 5 foot depth and shall intersect the floor at an angle equal to or steeper than 45 degrees from horizontal.

(c) At water depths greater than 5 feet the transitional angle from wall to floor shall be equivalent to the water depth of the pool less 3 feet 6 inches and shall intersect the floor at an angle:

(i) equal to or steeper than 45 degrees from horizontal; or

(ii) equal to or a shallower angle than the 1:3 floor slope required in R39-302-9(1)(b) for these areas.

(5) All outside corners created by adjoining walls or floor shall be rounded or chamfered to eliminate sharp corners to be easily cleanable.

([~~3~~]6) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

([4]7) Underwater seats and benches are allowed in pools so long as they conform to the following:

(a) Seats and benches shall be located completely inside of the shape of the pool. Where seats and benches are not located on the perimeter walls of the pool, seats and benches shall have a wall on the back of the seats and benches that extend above the operating level of the pool and is clearly visible to users.

(b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;

(c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide;

(d) Seats and benches shall not transverse a depth change of more than 24 inches, 61 centimeters;

(e) The minimum horizontal separation between sections of seats and benches shall be five feet, 1.52 meters.

(f) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);

(g) Seats and benches may not replace the stairs or ladders required in R392-302-12, but are allowed in conjunction with pool stairs;

(h) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and

(i) A line must mark the extent of the seat or bench within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

([~~5~~]8) Recessed footholds are allowed so long as they are at least four feet, 1.21 meters, under water and meet the requirements of R392-302-12(5)(b) and (c).

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards [~~established by~~]of:

(a) [~~the~~]The 2015-2017 USA Diving Official Technical Rules[~~ and Regulations 2004~~], Appendix B -- FINA Dimensions for Diving Facilities, which are incorporated by reference.; or

(b) Rule 1, Section 1, Article 4 and Rule 1, Section 2, Article 4 of the NCAA Men's and Women's Swimming and Diving 2014-2015 Rules and Interpretations, which is incorporated by reference; or

(c) Table 4.8.2.2 and Figure 4.8.2.2.1 and Figure 4.8.2.2.2 of the 2018 Model Aquatic Health Code, which are incorporated by reference; or

(d) Section 402.12, Table 402.12, and Figure 402.12 of the 2018 International Swimming Pool and Spa Code, which is incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches, 10.16 centimeters, in height, as required in R392-302-39(3)(a), in a contrasting color on the deck,

located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet, 7.62 centimeters.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches, 10.16 centimeters, in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) Location.

(a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(f) No pool shall be equipped with fewer that two means of entry or exit as outlined above.

(2) Handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(3) Steps.

(a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.

(b) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(c) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(4) Ladders.

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.

(c) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.

(5) Recessed Steps.

(a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.

(b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.

(2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:

(a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;

(b) multiple obstructions must be separated by at least five feet, 1.52 meters;

(c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.

(d) the design of the obstruction does not endanger the health or safety of persons using the pool; and

(e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(a) The Local Health Officer may allow decks to slope towards the pool for deck level gutter pools if it can be demonstrated that it will not adversely affect the pool's water quality and:

(i) the deck must slope back towards the pool for a maximum distance of five feet, 1.52 meters, from the water's edge; and

(ii) the portion of the deck that slopes back towards the pool must slope towards the pool at grade of 1/4 inch, six millimeters, to 3/8 inch, ten millimeters, per linear foot; and

(iii) a minimum of three feet, 91.4 centimeters, of deck that meets R392-302-13(3) must be provided beyond the high point of said deck.

(4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(6) Deck drains may not return water to the pool or the circulation system.

(7) The operator shall maintain decks in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

R392-302-14. Fencing and Barriers.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground.

(a) All gates for the pool enclosure shall open outward from the pool except where emergency egress rules or ordinances require them to swing into the pool area.

(b) Emergency egress gates or doors shall be designed in such a way that they do not prevent egress in the event of an emergency.

(c) Gates or doors shall be constructed so as to prevent unauthorized entry from the outside of the enclosure around pool area.

(3) Entrances to the facility may be exempted by the local health officer from the requirements in R392-302-14(2) if:

(a) The gate or door to a facility or pool area is part of a staffed, controlled entrance and is locked when the facility or pool area is not open to the public; or

(b) The pool or facility has certified lifeguards conducting patron surveillance when the pool or facility is open and the gate or door is locked when the facility or pool is not open to the public.

([3]4) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.

([4]5) Any pool enclosure which is accessible to the public when one or more of the pools are not being maintained for use, shall protect those closed pools from access by a sign meeting R392-302-39(3)(a) indicating the pool is closed and by using:

(a) a safety cover which restricts access and meets the minimum ASTM standard F1346-91; or

(b) a secondary barrier that is approved by the Department; or

(c) any method approved by the Department.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high as required in R392-302-39(3).

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The Department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the Department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the Department if the pool operator can demonstrate that the safety of the bathers is not compromised.

(a) The circulation system shall meet the minimum turnover time listed in Table 1.

(b) If a single pool incorporates more than one the pool types listed in Table 1, either:

(i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or

(ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.

(c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.

(d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as [~~the same~~]the original approved and designed number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.

(e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(f) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R616-2, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with NSF/ANSI 50-2015, which is incorporated by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

(12) Notwithstanding Subsection R392-302-3(1), all pools must comply with Subsection 16(12) by January 31, 2021. All chemical feed systems must be wired electrically to the main circulation pump so that the operation of these systems is dependent upon the operation of the main circulation pump. If a chemical feed system has an independent timer, the main circulation pump and chemical feed system timer must be interlocked.

TABLE 1

Circulation

Pool Type	Min. Number of Wall Inlets	Min. Number of Skimmers per 3,500 square ft. or less	Min. Turnover Time
1. Swim	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	8 hrs.
2. Swim, high bather load	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
3. Wading pool	1 per 20 ft., 6.10 m. min. of 2 equally spaced	1 per 500 sq. ft. 46.45 sq. m.	1 hr.
4. Spa	1 per 20 ft., 6.10 m.	1 per 100 sq. ft., 9.29 sq. m.	0.5 hr.

5. Wave	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	6 hrs.
6. Slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
7. Vehicle slide	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.
8. Special Purpose Pool	1 per 10 ft., 3.05 m.	1 per 500 sq. ft., 46.45 sq. m.	1 hr.

(12) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

(13) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulation-filtration and heating systems.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsection[s] R392-302-31[~~(2)(i)~~](13) and Subsection R392-302-32[~~(3)(c)~~](6), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The Department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each [~~wall~~]inlet must be designed as a [~~non-~~]directionally adjustable and lockable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(i) Inlets must be locked in place once adjusted for uniform circulation.

(ii) The head loss requirement for orifices may be reduced so long as it can be shown by demonstration that at least a 6:1 pressure ratio from orifice to the return loop is maintained.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(a) Inlets must be locked in place once adjusted for uniform circulation.

(b) The head loss requirement for orifices may be reduced so long as it can be shown by demonstration that at least a 6:1 pressure ratio from orifice to the return loop is maintained.

(4) The Department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011).

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.

(d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

(a) whether the drain is for single or multiple drain use;

(b) the maximum flow through the drain cover; and

(c) whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

(a) the sump that is recommended by the drain cover or grate manufacturer;

(b) a sump specifically designed for that drain by a Registered Design Professional as defined in ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011); or

(c) a sump that meets the ANSI/APSP-16 2011 standard, as incorporated in 16 CFR 1450.3 (July 5, 2011).

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(g) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

(a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2010 or ASTM standard F2387-04(2012), as required in the Federal Swimming Pool and Spa Drain Cover Standard, 15 U.S.C. 8003;

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1),(2) and (3)(b) shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.

(b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;

(d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii)(I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with NSF/ANSI 50-2015 standards, which is incorporated by reference, or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any

other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that meets the requirements of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011); and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011), and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50-2015, which is incorporated by reference.

(4) Gravity and pressure rapid sand filter requirements.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filter requirements.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to regulate the backwash flow rate and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Vacuum or pressure type precoat media filter requirements.

(a) The filtering area must be compatible with the design pump capacity as required by R392-302-16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.

(7) The Department may waive NSF/ANSI 50-2015, which is incorporated by reference, standards for precoat media filters and approve site-built or custom-built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum precoat media filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the Department may be acceptable. Where the Department or the local health department determines that a potential cross-connection exits, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filter requirements.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with disinfectant dosing or generating equipment which conform to the NSF/ANSI 50-2015, which is incorporated by reference, standards relating to mechanical chemical feeding equipment, or be deemed equivalent by the Department.

(2) All chlorine dosing and generating equipment, including erosion feeders, or in-line electrolytic and brine/bath generators, shall be designed with a capacity to provide the following, depending on the intended use:

(a) Outdoor pools: 4.0 pounds of free available chlorine per day per 10,000 gallons of pool water; or

(b) Indoor pools: 2.5 pounds of free available chlorine per day per 10,000 gallons of pool water.

(3) Where oxidation-reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.

(4) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.

(c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.

(d) A sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be attached to the entrance door to chlorine gas and equipment rooms that reads, "DANGER CHLORINE GAS" and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(5) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the Department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(6) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(7) Notwithstanding Subsection R392-302-3(1), all pools must comply with Subsection 21(7) by January 31, 2021. All [~~auxiliary~~]chemical feed [~~pumps~~]systems must be wired electrically to the main circulation pump so that the operation of these [~~pumps~~]systems is dependent upon the operation of the main circulation pump. If a chemical feed [~~pump~~]system has an independent timer, the main circulation pump and chemical feed [~~pump~~]system timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy, a shepherd crook, and a life pole where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:

2 Units eye dressing packet;
2 Units triangular bandages;
1 CPR shield;
1 scissors;
1 tweezers;
6 pairs disposable medical exam gloves; and

Assorted types and sizes of the following: self adhesive bandages, compresses, roller type bandages and bandage tape.

(a) The operator shall keep the first-aid kit filled, available, and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be posted. The sign shall state: WARNING - NO LIFEGUARD ON DUTY. In addition, the sign shall state in text that meets the requirements of "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) "BATHERS SHOULD NOT SWIM ALONE", and CHILDREN 14 AND UNDER SHALL NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment[~~and Signs~~]

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Station	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	[~~1 per 2,000~~]None [~~sq. ft., 185~~] [~~sq. meters,~~] [~~of pool area~~] [~~or fraction~~]	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube (used as a substitute for ring buoys, shepherd crook, [~~when~~] lifepole when [~~sq. meters,~~] lifeguards are present)	1 per 2,000	None [~~sq. ft., 185~~] [~~of pool area~~] [~~or fraction~~]
Life Pole or Shepherds Crook 185,	[~~1 per 2,000~~]None [~~sq. ft. 185,~~] [~~sq. meters,~~] [~~of pool area~~] [~~or fraction~~]	1 per 2,000 sq. ft. sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code as incorporated under Title 15a, State Construction and Fire Codes Act.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code as incorporated under Title 15a, State Construction and Fire Codes Act, without the written approval of the Department. The Department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

(i) For underwater lighting,

(ii) electrically powered automatic pool shell covers, and

(iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-[~~2004~~]2016, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition.

(2) Where dressing rooms are provided,[~~-a separate dressing room must be provided for each gender. The~~] the entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) At least one covered waste receptacle must be provided in each dressing room.

R392-302-25. Restroom and Shower Facilities.

(1) The facility shall provide patrons access to a restroom with shower [~~facility~~]facilities [~~for each gender~~]in accordance with Table 4. These must be:

(a) located with convenient access for bathers; and

(b) located no further than 150 feet, 45.7 meters, from the pool deck; and

([a]c) [~~The entrances and exits must be~~]designed to break the line of sight into the restroom and shower facilities.

(2) The minimum number of toilets and showers must be based upon the designed maximum bather load. A minimum of two unisex facilities, or one for each gender, must be provided with access to the pool deck.

(a) Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one gender.

(b) The minimum number of sanitary fixtures must be in accordance with Table 4 except as stated in R392-302-25(2)(b)(i).

(i) The local health department may [~~exempt any bathers who have private use fixtures available within 150 feet, 45.7 meters, of the pool from the total number of bathers used to calculate~~]reduce the minimum number of fixtures required by considering the number of fixtures available within 150 feet, 45.7 meters, of the pool deck. The minimum number of toilets with showers may not be reduced to less than two for unisex, or one for each gender, except where the bather load is 25 or less, in which case the minimum may be one unisex restroom with shower facility.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(3) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(4) The facility shall provide showers for each gender and shall enclose these showers for privacy. A minimum of one shower head for each gender must be provided for each 50 bathers or fraction thereof.

(a) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) If unisex facilities are provided they may count toward the total number of required fixtures in this section as long as the unisex facilities are provided in multiples of two, unless as specified in R392-302-25(2)(b)(i).

(6) Soap must be dispensed at all lavatories and showers.

(a) Soap dispensers must be constructed of metal or plastic.

(b) Use of bar soap or any communal soap item is prohibited.

(c) Disposable towels or air dryers must be provided for all lavatories.

(7) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(8) The operator shall maintain all areas and fixtures within restroom facilities in an operable, clean and sanitary condition.

(9) Restroom and shower facilities must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(10) Floor must slope to a drain and be constructed to prevent accumulation of water.

(11) Carpeting may not be installed on restroom and shower floors.

(12) Junctions between walls and floors must be coved.

(13) At least one covered waste receptacle must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) Disinfection Process.

(a) A pool must be continuously disinfected by a product which:

(i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water;

(ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;

(iii) Is compatible for use with other chemicals normally used in pool water treatment;

(iv) Does not create harmful or deleterious effects on bathers if used according to manufacturer's specifications; and

(v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(b) The concentration levels of the active disinfectant within the pool water shall be consistent with the label instructions of the disinfectant and with the minimum levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(i) At no time shall the concentration level of free available chlorine reach a level above ten parts per million while the facility is open to bathers.

(2) Products used to treat or condition pool water shall be used according to the product label.

(3) Testing Kits.

(a) An easy to operate pool-side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.

(b) If chlorine is the disinfectant used, it must be tested by the diethyl-p-phenylene diamine method, the leuco crystal violet method, or another test method approved by the Department.

(c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.

(d) Expired test kit reagents may not be used.

(4) Chemical Quality of Water.

(a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.

(b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.

(c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.

(d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.

(e) A calcium hardness of at least 200 milligrams per liter must be maintained.

(f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

(5) Water Clarity and Temperature.

(a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter, must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health department may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:
SI = pH + TF + CF + AF - TDSF
SI means saturation index
TF means temperature factor
CF means calcium factor
mg/l means milligrams per liter
deg F means degrees Fahrenheit
AF means alkalinity factor
TDSF means total dissolved solids factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	mg/l	CF	mg/l	AF
32	0.0	25	1.0	25	1.4
37	0.1	50	1.3	50	1.7
46	0.2	75	1.5	75	1.9
53	0.3	100	1.6	100	2.0
60	0.4	125	1.7	125	2.1
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	250	2.0	250	2.4
94	0.8	300	2.1	300	2.5
105	0.9	400	2.2	400	2.6
128	1.0	800	2.5	800	2.9

Total Dissolved Solids	
mg/l	TDSF
0 to 999	12.1
1000 to 1999	12.2
2000 to 2999	12.3
3000 to 3999	12.4
4000 to 4999	12.5
5000 to 5999	12.55

6000 to 6999	12.6
7000 to 7999	12.65
each additional 1000, add	.05

If the SATURATION INDEX is 0, the water is chemically in balance.
If the INDEX is a minus value, corrosive tendencies are indicated.
If the INDEX is a positive value, scale-forming tendencies are indicated.
EXAMPLE: Assume the following factors:
pH 7.5; temperature 80 degrees F, 19 degrees C;
calcium hardness 235; total alkalinity 100; and total dissolved solids 999.
pH = 7.5
TF = 0.7
CF = 1.9
AF = 2.0
TDSF = 12.1
TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 = 0.0
This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine(2) (milligrams per liter)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine(2) (milligrams per liter)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (milligrams per liter)	4.0(1)	4.0(1)	4.0(1)
Iodine (milligrams per liter)	1.0(1)	1.0(1)	1.0(1)
~~[Ultraviolet and Hydrogen Peroxide (milligrams per liter hydrogen peroxide)]~~	~~40.0(1)~~	~~40.0(1)~~	~~40.0(1)~~
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (TDS) over start-up TDS (milligrams per liter)	1,500	1,500	1,500
Cyanuric Acid (milligrams per liter)	10 to 100	10 to 100	10 to 100
Maximum Temperature (degrees Fahrenheit)	104	104	104
Calcium Hardness (milligrams per liter as calcium carbonate)	200(1)	200(1)	200(1)
Total Alkalinity (milligrams per liter as calcium carbonate)			
Plaster Pools	100 to 125	80 to 150	100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, milligrams per liter)	0.5	0.5	0.5

Note (1): Minimum Value
Note (2): Maximum value of free chlorine is ten milligrams per liter as stated in Subsection 27(1)(b)(i).

(6) Pool Water Sampling and Testing.

(a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at least once per month or at a more frequent interval as determined by the Local health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform total coliform and heterotrophic plate count testing.

(b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.

(c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(d) A pool water sample fails bacteriological quality standards if it:

(i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or

(ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

R392-302-28. Cleaning Pools.

(1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.

(2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible scum or floating matter.

(3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

(1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the Department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with R392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(5) fail bacteriological quality standards as defined in Section R392-302-27(5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or

(b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include 911 or other local emergency numbers.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) The Department shall approve programs which provide training and certifications to lifeguards. These programs shall meet the standards set in Subsection R392-302-30(4)(a).

(4) A lifeguard must:

(a) Obtain training and certification in:

(i) lifeguarding by the American Red Cross or an equivalent program; and

(ii) professional level skills in CPR, AED use, and other resuscitation skills consistent with the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care; and

(iii) first aid consistent with the 2010 American Heart Association Guidelines for First Aid.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2); and

(c) Have full authority to enforce all rules of safety and sanitation.

(5) A lifeguard shall not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(6) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(7) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.

(8) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Where no lifeguard service is provided, children 14 and under shall not use a pool without responsible adult supervision. Children under the age of five shall not use a spa or hot tub.

(f) The lifeguards and operator shall ensure that diapers shall be changed only in restrooms not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person using a swim diaper and waterproof swimwear discussed in subsection R392-302-30(7)(c) above must undergo a cleansing shower before returning to the pool.

(f) Placards that meet the requirements of "Rule Sign" in R392-302-39(1), (2) and (3)(c) and embody the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and lifeguard rooms (where applicable).

R392-302-31. Special Purpose Pools: Spa Pools.

(1) Spa pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of spa pools.

(a) Spa pool projects require consultation with the local health department having jurisdiction.

(2) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.

(3) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).

(4) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The Department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

(5) This subsection supercedes R392-302-12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

(6) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.

(7) This subsection supercedes R392-302-13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.

(8) This subsection supercedes R392-302-13(5). The Department may allow spa decks or steps made of sealed, clear-heart redwood.

(9) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. An exception is allowed to the deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The top surface of the common pool side wall may not exceed 18 inches, 45.7 centimeters, in width and shall have markings indicating "No Walking" or an icon that represents the same, provided in block letters at least four inches, 10.16 centimeters, in height, as required by R392-302-39(3)(a), in a contrasting color on the horizontal surface of the common wall. Additionally the deck space around the remainder of the spa shall be a minimum of five feet, 1.52 meters.

(10) This subsection supersedes R392-302-15. The local health officer may exempt a spa pool from depth marking requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.

(11) A spa pool must have a minimum of one turnover every 30 minutes.

(12) Spa pool air induction systems shall meet the requirements of R392-302-16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392-302-16(13).

(13) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(14) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:

(a) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.

(b) The Department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet-vacuum is available on site to remove any water left in the pool after draining.

(15) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

(16) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27 (6)(e).

(17) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).

(18) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.

(19) A spa pool shall meet the total alkalinity requirements of R392-302-27 (3)(d).

(20) A spa pool must have a sign that meets the requirements of a "Rule Sign" in R392-302-39(1),(2) and (3)(c) which contains the following information:

(a) The word "caution" centered at the top of the sign.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(21) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

(a) A clearly labeled emergency shutoff or control switch for the purpose of stopping the motor(s) which provide power to the recirculation system, jet system, and water feature systems shall be installed at a point readily accessible to the users and not less than five feet (1.5 meters) away, adjacent to, and within sight of the spa. Non-lifeguarded pools shall have an audible alarm sound when this emergency shutoff is used.

R392-302-32. Special Purpose Pools: Wading Pools.

(1) Wading pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of wading pools.

(a) Wading pool projects require consultation with the local health department having jurisdiction.

(2) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(4) The deck of a wading pool may be included as part of adjacent pool decks.

(5) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(6) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(7) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

R392-302-33. Special Purpose Pools: Hydrotherapy Pools.

(1) Hydrotherapy pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of hydrotherapy pools.

(a) Hydrotherapy pool projects require consultation with the local health department having jurisdiction.

(2) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-28 Cleaning of Pools and R392-302-29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.

(3) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(4) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(5) A local health officer may grant an exception to section R392-302-31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-34. Special Purpose Pools: Water Slides.

(1) Water slides must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of water slides.

(a) Water slide projects require consultation with the local health department having jurisdiction.

(2) Slide Flumes.

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the Department.

(3) Flume Clearance Distances.

(a) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.

(b) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) The distance between the side of the vehicle flume exit and the pool side wall must be at least 6 feet, 1.83 meters.

(e) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

(f) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Splash Pool Dimensions.

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the Department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The Department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the Department that safe exit from the flume into the splash pool can be assured.

(e) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(5) General Water Slide Requirements.

(a) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(b) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(c) Water slides shall meet the bather load requirements of R392-302-7(1)(d).

(6) Water Slide Circulation Systems.

(a) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(b) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(c) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(d) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all NSF/ANSI 50-2015, which is incorporated by reference, Section 6. Centrifugal Pumps, standards for pool pumps.

(e) Flume supply service pumps must have check valves on all suction lines.

(f) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(g) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(h) Pump reservoir areas must be accessible for cleaning and maintenance.

(7) Slide Signs.

(a) Signs that meet the requirements in R392-302-39(1), (2) and (3)(c) and reflecting the slide manufacturer's recommendations must be mounted adjacent to the entrance to a water slide and at other appropriate areas in accordance with R392-302-39(1). The heading of the signs shall be, "SLIDE INSTRUCTIONS, WARNINGS, AND REQUIREMENTS". The body of the signs shall state at least the following:

(i) Instructions including:

(A) proper riding position,

(B) expected rider conduct,

(C) dispatch procedures,

(D) exiting procedures, and

(E) obeying slide attendants or lifeguards.

(ii) Warnings to include:

(A) slide characteristics such as speed, and

(B) depth of water in splash zone.

(iii) Requirements which include that riders being free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.

R392-302-35. Special Purpose Pools: Interactive Water Features.

(1) Interactive water features must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of interactive water features.

(a) Interactive water feature projects require consultation with the local health department having jurisdiction.

(2) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of the State Construction Code Title 15a, State Construction and Fire Codes Act.

(3) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one-half inch in diameter. Spray devices that extend above ground level shall be clearly visible.

(4) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.

(5) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.

(6) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground reservoir.

(7) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system the meets the requirements of in R392-302-38(4)(c) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.

(8) A sign that meets the requirement R392-302-39(1), (2) and (3)(c) stating:

(a) The word "CAUTION" centered at the top of the sign.

(b) No running on or around the interactive water feature.

(c) Children under the age of 12 must have adult supervision.

(d) No food, drink, glass or pets are allowed on or around the interactive water feature.

(e) For the health of all users restrooms shall be used for the changing of diapers.

(9) If the interactive water feature is operated at night, five foot-candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.

(10) Hydraulics.

(a) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.

(b) The interactive water feature filter system shall draft from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.

(c) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.

(d) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.

(e) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall meet the requirements of R392-302-4.

(f) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.

(g) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or

doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.

(h) The suction intake from the interactive water feature circulation pump shall be located in the lowest portion of the underground reservoir.

(i) A means of vacuuming and completely draining the interactive water feature tank shall be provided.

(11) An interactive water feature is exempt from:

(a) The wall requirement of section R392-302-10;

(b) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;

(c) The fencing and access barrier requirements of section R392-302-14;

(d) The outlet requirements of section R392-302-18 except any submerged outlet that may create an entrapment hazard to users of the feature shall meet the requirements of R392-302-18(1)(a);

(e) The overflow gutter and skimming device requirements of section R392-302-19;

(f) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);

(g) The restroom and shower facility requirements of section R392-302-25 as long as toilets, lavatories and changing tables are available within 150 feet;

(h) The pool water clarity and temperature requirements of subsection R392-302-27([4]5);

(i) The diving area requirement of R392-302-11 except R392-302-11(4)(a) and (b) may be required by the Local Health Officer if the Local Health Officer determines that a diving risk exists;

(j) The depth marking and safety rope requirements of R392-302-15;

(k) The underwater lighting requirements of R392-302-23(1),(2), and (3);

(l) The supervision of bathers requirements of R392-302-30;

(m) The bather load requirements of R392-302-7; and

(n) The pool color requirements of R392-302-6(5).

(12) All interactive water features shall be constructed with a collection zone that meets the requirements of R392-302-6. Vinyl liners that are not bonded to a collection zone surface are prohibited. A vinyl liner that is bonded to a collection zone shall have at least a 60 millimeter thickness. Sand, clay, or earth collection zones are prohibited.

(a) The collection zone material of an interactive water feature must withstand the stresses associated with the normal uses of the interactive water feature and regular maintenance. The collection zone structure and associated tanks shall withstand, without any damage to the structure, the stresses of complete emptying of the interactive water feature and associated tanks without shoring or additional support.

(b) The collection zone of an interactive water feature must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The collection zone surfaces must be free of cracks or open joints with the exception of structural expansion joints or openings that allow water to drain to the collector tank. Openings that drain to the collector tank shall not pass a one-half inch sphere. The owner of a non-cementitious interactive water feature shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(i) for pools built with prefabricated pool sections or pool members, the[~~International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001~~] ISO 19712-1:2008 - Plastics -- Decorative solid surfacing materials -- Part 1: Classification and specifications, which is incorporated by reference; or

(ii) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of Section R392-302-6.

R392-302-36. Special Purpose Pools: Instructional Pools.

(1) The Department shall undertake to investigate the public health related experiences and science of instructional pools operating with the exemptions in this section. That investigation shall be completed on June 30th, 2021, after which time this section will expire and may be replaced with minimum requirements based on the findings of the investigation. The Department will make those findings public 90 days prior to the expiration date.

(a) This investigation shall include periodic testing of the pool's water balance, disinfection level, total coliform, and heterotrophic plate count.

(2) An instructional pool is exempt from all requirements of R392-302.

(a) Pools operating under this exemption shall post a prominent sign stating that the pool does not conform to a standard design and is under evaluation to determine applicable standards to be implemented in the future. The lettering in this sign shall be no less than one centimeter in height.

(b) Pools operating under this exemption shall require parents of participating children to sign an acknowledgment that they have read and understand the notice required in R392-302-36(2)(a).

R392-302-37. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-38. Cryptosporidiosis Watches and Warnings.

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign meeting at a minimum the ANSI Z535.2-2011, which is incorporated by reference, requirements for NOTICE signs with a 10-foot viewing distance and approved by the local health officer. An

Adobe Acrobat .pdf version of the sign that meets the requirements of this section shall be made available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 0.39 inches, 1.0 centimeters, high and include the following four bulleted statements in black letters:

-All with diarrhea in the past 2 weeks shall not use the pool.

-All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

-All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

-Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

(a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);

(b) maintain the pH between 7.2 and 7.5; and

(c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-38(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-38(4)(b).

(b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.

(c) A full flow ultraviolet treatment system that meets the requirements of standard NSF/ANSI 50-2015, which is incorporated by reference, for ultraviolet light process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of standard NSF/ANSI 50-2015, which is incorporated by reference, for ozone process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

(e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

(i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-38(4)(a);

(ii) assure safety for swimmers and pool operators; and

(iii) comply with all other applicable rules and federal regulations.

TABLE 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 mg/l	15,300 minutes (255 hours)
10 mg/l	1,530 minutes (25.5 hours)
20 mg/l	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

R392-302-39. Signs.

(1) Signs required in R392-302 shall be placed to alert and inform patrons in enough time that the patrons may take appropriate actions.

(2) Signs shall be written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.

(3) As required in different subsections of this rule, sign lettering shall meet one or more, if stated, of the following minimum size standards:

(a) "4 Inch Safety Sign" shall be written in all capital letters that are at least four inches, 10.2 centimeters in height.

(b) "2 Inch Safety Sign" shall be written in all capital letters that are at least two inches, 5.1 centimeters, in height.

(c) "Rule Signs" shall be written with any required signal word, warning or caution, as the sign heading in letters at least two inches, 5.1 centimeters, in height and the body or bulleted rules in letters at least 0.5 inches, 1.27 centimeters, in height.

(i) If the sign can only be viewed from more than a distance of ten feet, 3.048 meters, the letter height shall be larger in the same proportion as the required viewing distance is to ten feet, 3.048 meters.

(ii) The Local Health Officer may approve smaller letter sizes than those required in R392-302-39(3)(c) if the sign will always

be viewed from less than a ten foot, 3.048 meters, distance and if the Local Health Officer agrees that the sign meets the requirements of R392-302-39(1) and (2).

KEY: pools, spas, swimming, water
Date of Enactment or Last Substantive Amendment: [~~May 24, 2018~~]2020
Notice of Continuation: November 7, 2016
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30; 26-15-2

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R414-506**	**Filing No. 52319**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Agency:	Division of Medicaid and Health Financing	
Room no.:		
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state:		
Mailing address:	PO Box 143102	
City, state, zip:	Salt Lake City, UT, 84114-3102	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Hospital Provider Assessments
3. Purpose of the new rule or reason for the change:
The purpose of these changes are to update certain provisions in this rule, and to update citations in the text in accordance with H.B. 37, passed during the 2019 General Session.
4. Summary of the new rule or change:
This amendment updates citations to the Utah Code and removes payment provisions that no longer apply.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
B) Local governments:
There is no impact on local governments because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There is no impact on small businesses because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There is no impact on non-small businesses because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
There is no impact on Medicaid providers and Medicaid members because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
F) Compliance costs for affected persons:
There are no compliance costs to a single Medicaid provider or to a Medicaid member because updates in this rule neither affect ongoing services for Medicaid members nor reimbursement for Medicaid providers.
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 Summary Table			
Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

Joseph K. Miner, MD, 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	Title 26, Chapter 36d

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/06/2019

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-506. Hospital Provider Assessments.
R414-506-1. Introduction and Authority.

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36[a]d[~~ and governs the services allowed under 42 CFR 447.272~~].

R414-506-2. Definitions.

The definitions in Section 26-36[a]d -103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Section 26-36[a]d-203, the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

R414-506-4. Change in Hospital Status.

(1)(a) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36[a]d-203[~~- or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205~~], the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(b) The Department may identify a hospital that has changed status. If such a hospital is identified, it shall not be included in the subsequent quarterly assessment.

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4(1)(a), or was identified by the Department under Subsection R414-506-4(1)(b):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred[~~- and the hospital will receive full payment for the applicable quarter~~]; and

(b) the hospital is exempt from future assessment[~~- and not eligible for payment under this rule~~].

(3) For State Fiscal Year 20[~~13~~]20 and subsequent years, prior to the beginning of each state fiscal year, the Department shall determine if new providers are [~~eligible to receive Medicaid hospital inpatient access payments. The new providers will also be~~]subject to the assessment[~~- beginning that same state fiscal year as they become eligible to receive the Medicaid hospital inpatient access payments~~]. New providers identified will be added prospectively beginning with that new state fiscal year (e.g., a May 201[~~2~~]9 evaluation identifying new providers will result in those new providers being added July 201[~~2~~]9).

R414-506-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-506-6. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36[a]d-208.

[~~R414-506-7. Retrospective Operation.~~

~~This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 26-36a-209 of the Hospital Provider Assessment Act.~~]

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 1, 2013~~]2020
Notice of Continuation: July 16, 2015
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36[a]d

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R438-15**	**Filing No. 52322**

Agency Information

1. Agency:	Utah Department of Health, Disease Control and Prevention, Laboratory Services	
Building:	Utah Public Health Laboratory	
Street address:	4431 S. 2700 W.	
City, state:	Taylorsville, UT 84119	
Contact person(s):		
Name:	**Phone:**	**Email:**
Kim Hart	801-965-2495	kimhart@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Newborn Screening
3. Purpose of the new rule or reason for the change:
X-Linked Adrenoleukodystrophy (XALD) is being added to the list of screened disorders per recommendation of the Newborn Screening Advisory Committee. Additionally, the term disability and mental retardation will be removed and replaced with developmental delay,

which is terminology used by the Individuals with Disabilities Education Act (IDEA).

4. Summary of the new rule or change:

This rule change will add XALD to Utah's Newborn Screening Panel per recommendation of the Newborn Screening Advisory Committee under Section R438-15-4. Additionally, the term disability and mental retardation will be removed and replaced with developmental delay, which is terminology used by the IDEA in Section R438-15-1.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The cost to Medicaid is estimated to be $44,633 (15,233 X $2.93). This is based on 2015 Medicaid data which indicated 31% of Utah births are Medicaid eligible. The calculated cost to add XALD is $2.93/newborn. Medical literature indicates that screening for this condition will identify 2-3 cases in 50,000 births. Early identification results in a decrease in hospitalizations, unnecessary testing and treatments for newborns identified with this disorder. Each child not identified through newborn screening requires more in hospitalizations and testing before the disorder is identified. Estimated savings per case identified through newborn screening ranges from $350,000 to $2,000,000.

B) Local governments:

There is no anticipated financial impact on local governments.

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

The Department does not have sufficient data to estimate the cost to small businesses. Additional cost of XALD screening is passed on to Medicaid and third party payers.

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

The additional cost to third party payers is $104,141 based on 2015 non-Medicaid deliveries. This is calculated as $2.93 X 35,543 births.

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

There is no anticipated financial impact on persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

The compliance cost will be $2.93 per newborn screened. The Department does not have sufficient data to estimate the cost to any particular third party payer who pays for the screening.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$44,633	$44,633	$44,633
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$104,141	$104,141	$104,141
Other Person	$0	$0	$0
Total Fiscal Costs:	**$148,774**	**$148,774**	**$148,774**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$350,000+**	**$350,000 +**	**$350,000+**
Net Fiscal Benefits:	**$201,226+**	**$201,226 +**	**$201,226+**

H) Department head sign-off on regulatory impact:

The Executive Director of the Department of Health, Joseph Miner, MD, 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 fiscal impact to businesses of $2.93 per test is necessary to provide an important screening to monitor and protect public health.
B) Name and title of department head commenting on the fiscal impacts:
Joseph Miner, MD, 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 26-1-30	Section 26-10-6	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	**Date:**	11/11/2019

R438. Health, Disease Control and Prevention, Laboratory Services

R438-15. Newborn Screening.

R438-15-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of developmental delays[~~disability and mental retardation~~] in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-6, 26-1-30 and 26-10-6.

R438-15-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R438-15-9.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

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

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R438-15-3. Newborn Screening Advisory Committee.

(1) Newborn Screening Advisory Committee shall be composed of at least 9 members as follows:

(a) an individual with an advanced degree (MS/PhD/MD) in genetics or other relevant field, who will serve as Chair;

(b) a representative from the Utah Hospital Association;

(c) a community pediatrician;

(d) the Director of the Division of Disease Control and Prevention;

(e) an advocate or a consumer of a newborn screening services;

(f) clinical consultants for the Newborn Screening program;

(g) a representative from the Utah Public Health Laboratory

(h) a representative from the Newborn Screening Follow-up Program;

(i) a representative from the research community with knowledge about disorders considered for future addition to the newborn screening panel.

(2) The Department Executive Director shall approve committee membership with counsel from the advisory committee.

(3) The term of committee members shall be four years;

(a) members may serve up to three additional terms as requested;

(b) if a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment;

(c) a majority of the committee constitutes a quorum at any meeting. If a quorum is present, the action of the majority of members shall be the action of the advisory committee.

(4) The committee shall:

(a) advise the Department on policy issues related to newborn screening services;

(b) provide guidance to programs and functions within the Department having to do with newborn screening services and

(c) evaluate potential tests that could be added to newborn or population screening and make recommendations to the Department.

R438-15-4. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R438-15-12.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1(fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;

(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);

(vii) Carnitine Palmitoyl Transferase I Deficiency;

(viii) Carnitine Palmitoyl Transferase 2 Deficiency;

(ix) Carnitine Acylcarnitine Translocase Deficiency;

(x) Multiple Acyl CoA Dehydrogenase Deficiency;

(h) Organic Acids Disorders:

(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);

(ii) Methylmalonic acidemia (multiple enzymes);

(iii) Malonic Aciduria;

(iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);

(v) 2-Methylbutiryl CoA dehydrogenase deficiency;

(vi) Isobutyryl CoA dehydrogenase deficiency;

(vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;

(viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);

(ix) 3-Methylcrotonyl CoA carboxylase deficiency;

(x) 3-Ketothiolase deficiency;

(xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;

(xii) Holocarboxylase synthase (multiple carboxylases) deficiency;

(i) Cystic Fibrosis;

(j) Severe Combined Immunodeficiency syndrome; and

(k) Disorders of Creatine Metabolism and

(l) Spinal Muscular Atrophy

(m) X-Linked Adrenoleukodystrophy

R438-15-5. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R438-15-6. Timing of Collection of First Specimen.

The first specimen shall be collected between 24 and 48 hours of the newborn's life. Except:

(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R438-15-7. Parent Education.

The person who has responsibility under Section R438-15-5 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R438-15-8. Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 16 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 24 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R438-15-9. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening form;

(c) Not use the Newborn Screening form beyond the date of expiration;

(d) Not alter the Newborn Screening form in any way;

(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R438-15-10. Abnormal Result.

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R438-15-11. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R438-15-9. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

R438-15-12. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R438-15-13. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R438-15-14. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R438-15-15. Confidentiality and Related Information.

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R438-15-10(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R438-15-16. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R438-15-17. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R438-15-18. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R438-15-19. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: health care, newborn screening
Date of Enactment or Last Substantive Amendment: [~~January 1, 2018~~]2020
Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30; 26-10-6

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R647-1**	**Filing No. 52348**

Agency Information

1. Agency:	Natural Resources; Division of Oil, Gas, and Mining	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple, Suite 1210	
City, state:	Salt Lake City, Utah 84114	
Mailing address:	1594 West North Temple, Suite 1210	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Minerals Regulatory Program
3. Purpose of the new rule or reason for the change:
The purpose of the rule is to establish definitions of terms utilized with the Title R647 Minerals Regulatory Programs. These rule changes will amend two definitions, "shut down" and "suspension," after finding an ambiguity in this rule as a result of a public safety concern.

4. Summary of the new rule or change:

Section R647-1-106 establishes definitions for terms used within Title R647 Minerals Regulatory Program rules. The change amends the definition for "shut down" and "suspension."

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), which will be associated with these proposed rule changes. There is no estimated cost to the state, but these rule changes will benefit the Division by providing clearer language regarding mineral mines in suspension which will aid in employees being more efficient and decisive.

B) Local governments:

These rule changes will not affect local governments.

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

There are a total of 559 small business mining operators (for a complete listing of NAICS codes use in this analysis, please contact the agency) in the state of Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

There are 36 non-small businesses in the Mining industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

These rule changes 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 mineral mine operators.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

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:
These rule changes will provide language clarity which will result in making employees more efficient and decisive, and will also reduce expenditures for attorney and related costs for a submittal of a matter for Board of Oil, Gas, and Mining approval for mineral mine owners with mines in suspension.
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.		

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:	01/22/2020	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
12/11/2019	10:00 AM	DNR, 1594 West North Temple, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/30/2019
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	John Baza; Director	**Date:**	11/15/2019

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, and Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Section 40-8-2 of the Act states the findings of the Legislature.

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R647-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Department of Environmental Quality, the Utah Division of State History, the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R647-1-103. General Rules.

The following are general rules for statewide application.

R647-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R647-1-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (Section 40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63G, Chapter 4, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto that is determined to be complete and contains a mining and reclamation plan, which has been approved by the Division. A notice of intention for exploration having a disturbed area of five acres or less, or a small mining operation must be determined complete in writing by the Division, but does not require a mining and reclamation plan.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres in an incorporated area of a county or ten acres in an unincorporated area of a county. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R647-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles,

the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time in an incorporated area of a county or more than ten surface acres at any time in an unincorporated area of a county.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; reconnaissance activities; or activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, that provide the complete information required for authorization to conduct mining operations, and includes any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the Division when either a notice of intention for a small mining operation or exploration is determined to be complete and includes a surety approved by the Division, or a notice of intention for a large mining operation or exploration with a plan of operations and surety approved by the Division.

"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.

"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 all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were created by alluvial sedimentary processes. The definition of rock aggregate specifically excludes any solid rock in the form of bedrock which is exposed at the surface of the earth or overlain by unconsolidated material.

"Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 1/16mm to 2mm, which has been deposited by sedimentary processes.

"Shut Down" means an absence of onsite mining operations on all land affected under a complete or approved notice of intention where the operator intends that mining operations are permanently terminated, or the Division, after notice, makes a determination pursuant to R647-3-113.7 or R647-4-117.6.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time in an incorporated area of a county or ten or less surface acres at any time in an unincorporated area of a county.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Suspension" means an absence of ongoing operations on all land affected under an approved notice of intention, where the operator intends that operations will eventually resume.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~October 26, 2011~~]2020
Notice of Continuation: January 24, 2018
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R647-2**	**Filing No. 52349**

Agency Information

1. Agency:	Natural Resources; Division of Oil, Gas, and Mining	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple, Suite 1210	
City, state:	Salt Lake City, Utah 84114	
Mailing address:	1594 West North Temple, Suite 1210	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Exploration

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

The purpose of this rule is to establish filing requirements and review procedures in the non-coal notice of intention to conduct exploration. These rule changes are the result of a public safety concern regarding an ambiguity in the rule.

4. Summary of the new rule or change:

Rule R647-2 establishes filing requirements and review procedures within the Title R647 Minerals Regulatory Program rules. These rule changes will amend the operation size from 5 acres to 10 acres, and extend the validity date from November 30th to December 31st.

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 these proposed rule changes. There is no estimated cost to the state, but these rule changes will benefit the Division by providing clearer language regarding mineral mines in suspension which will aid in employees being more efficient and decisive.

B) Local governments:

These rule changes will not affect local governments.

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

There are a total of 559 small business mining operators (for a complete listing of NAICS codes use in this analysis, please contact the agency) in the state of Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

There are 36 non-small businesses in the Mining industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

These rule changes 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 mineral mine operators.

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

narratives above.)

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

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:

These rule changes will provide language clarity which will result in making employees more efficient and decisive, and will also reduce expenditures for attorney and related costs for a submittal of a matter for Board approval for mineral mine owners with mines in suspension.

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.		

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:	01/22/2020

B) A public hearing (optional) will be held:

On:	At:	At:
12/11/2019	10:00 AM	DNR, 1594 West North Temple, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/30/2019

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

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	**Date:**	11/15/2019

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-2. Exploration.
R647-2-101. Filing Requirements and Review Procedures.

1. Prior to the commencement of exploration, a Notice of Intention to Conduct Exploration (FORM MR-EXP) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP), the Division will review the proposal and notify the operator in writing that the notice of intention is:

2.11. Complete and all required information has been submitted; or

2.12. Incomplete, and additional information as identified by the Division will be required.

The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. If more than five acres of disturbance are planned, a detailed exploration development and reclamation plan must be included in the notice of intention and approved by the Division.

4. The Division will review and approve or disapprove:

4.11. The form and amount of reclamation surety, and;

4.12. Any variances requested under R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

5. Developmental drilling conducted within an already approved disturbed area with approved surety does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP).

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due annually by the deadline in R647-2-115 for reports.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-2-102. Duration of the Notice of Intention.

1. A Notice of Intention to Conduct Exploration that has been determined complete or, for operations of more than [~~5~~]10 acres has been approved, shall be valid until [~~November 30th~~]December 31st of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation.

2. The Division will review and approve the extension and adjust if necessary, the amount of reclamation surety.

3. Authorization to operate under a Notice of Intention to Conduct Exploration may be withdrawn in the event of failure by the operator to pay permit fees required by R647-2-101.6, or to maintain and update reclamation surety as required, after notice and opportunity for Board hearing.

R647-2-103. Notice of Intention to Conduct Exploration.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-2-104	Operator(s), Surface and Mineral Owner(s)
R647-2-105	Maps and Drawings
R647-2-106	Project Description
R647-2-107	Operation Practices
R647-2-108	Hole Plugging Requirements
R647-2-109	Reclamation Practices
R647-2-110	Variance

R647-2-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-2-105. Maps and Drawings.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operation details.

1. The general location map shall be the scale of a USGS 7.5-minute series map or equivalent (1"=2000') and identify new or existing access roads.

2. The operations map (1"=200' or other scale as determined necessary by the Division) shall identify:

2.11 The area to be disturbed;

2.12 The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned exploration activities; and

2.13 Any adjacent previous disturbance for which the operator is not responsible.

R647-2-106. Project Description.

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed;

6. An estimate of the total number of surface acres to be disturbed.

7. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved, or proposed to be moved during the exploration operation.

R647-2-107. Operation Practices.

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-2-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-2-109. Reclamation Practices.

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

R647-2-110. Variance.

1. The operator may request a variance from Rule R647-2-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-2-111. Surety.

1. After receiving notification that the notice of intention is approved or complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for a Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation for similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the reclamation surety must be approved by the Division. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts; and

4.16. The Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling or regrading has been successfully performed and the residual amount of retained surety is determined to be adequate to insure completion of reclamation.

R647-2-112. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, and comply with the requirements of R647-2-107, R647-2-108, or R647-2-109 the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division,

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where a reclamation surety has been filed with other governmental agencies, the Board shall notify such agency of the hearing findings and seek forfeiture concurrence as necessary.

3.11. The forfeited surety shall be used only for the reclamation of land to which it relates, and any residual amount returned.

R647-2-113. Confidential Information.

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R647-2-114. Revised Notice.

1. Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) letter must be submitted when:

1.1. The proposed additions or changes will occur outside the originally designated legal subdivision; or

1.2. For exploration operations under 5 acres the proposed additions will cause the total unreclaimed surface disturbance to increase by more than 1 acre or exceed 5 acres; or

1.3. For exploration operations over 5 acres, the proposed additions or changes will cause an increase in the area of disturbance previously approved.

2. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any particular point in time during the revised exploration operations, the Division may undertake a recalculation of the surety amount as provided in R647-2-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is filed with the Division.

R647-2-115. Reports.

On or before [~~January 31st~~]November 30th of each year, the operator conducting exploration must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R647-2-116. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in R647-5, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~October 26, 2011~~]2020
Notice of Continuation: January 24, 2018
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R647-3**	**Filing No. 52350**

Agency Information

1. Agency:	Natural Resources; Division of Oil, Gas, and Mining	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple, Suite 1210	
City, state:	Salt Lake City, Utah 84114	
Mailing address:	1594 West North Temple, Suite 1210	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Small Mining Operations
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to establish requirements and procedures for a notice of intention for small mining operations within the Title R647 Minerals Regulatory Program. These rule changes are a result of finding an ambiguity in the rule after a public safety concern.
4. Summary of the new rule or change:
Rule R647-3 establishes filing requirements and review procedures within the Title R647 Minerals Regulatory Program rules. These rule changes amend the duration of the notice of intention, the notification of suspension or termination of operation procedures, and the reports required.

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, that will be associated with this proposed rule change. There is no estimated cost to the state, but this rule change will benefit the Division by providing clearer language regarding mineral mines in suspension which will aid in employees being more efficient and decisive.

B) Local governments:

These rule changes will not affect local governments.

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

There are a total of 559 small business mining operators (for a complete listing of NAICS codes use in this analysis, please contact the agency) in the state of Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

There are 36 non-small businesses in the Mining industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board of Oil, Gas and Mining when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.

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

These rule changes 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 mineral mine operators.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

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:

These rule changes will provide language clarity which will result in making employees more efficient and decisive, and will also reduce expenditures for attorney and related costs for a submittal of a matter for Board approval for mineral mine owners with mines in suspension.

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.		

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:	01/22/2020

B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
12/11/2019	10:00 AM	DNR, 1594 West North Temple, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/30/2019
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	**Date:**	11/15/2019

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-3. Small Mining Operations.
R647-3-101. Filing Requirements and Review Procedures.

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

2.12.111. The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

4. The operator must notify the Division no later than 30 days after beginning small mining operations.

5. A permittee's authorization under a notice of intention to conduct small mining operations shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for small mining operations.

[~~5.11.11. Small Mining Operations (less than 5 disturbed acres)~~]

5.12. Fees are due annually by the deadline in R647-3-117 for reports.

6. A permittee may avoid payment of the fee by complying with the following requirements:

6.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-3-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation. However, the approved notice of intention may be withdrawn, after notice and opportunity for Board hearing, in the event [~~of failure by~~]the operator fails to pay permit fees required by R647-3-101 [~~or~~]; to maintain and update adequate reclamation surety as required in R647-3-111[.]; substantially fails to perform reclamation or conduct mining operations so that reclamation can be accomplished in accordance with the reclamation practices in R647-3-109; or if mining operations are continuously shut down or in suspension for a period in excess of five (5) years, unless an extended period of suspension is approved upon application of the operator.

R647-3-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-3-104	Operator(s), Surface and Mineral Owner(s)
R647-3-105	Map
R647-3-106	Operation Plan
R647-3-107	Operation Practices
R647-3-109	Reclamation Practices
R647-3-110	Variance

R647-3-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-3-105. Project Location and Map.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be the scale of a USGS 7.5 minute series map or equivalent (1" = 2000') and identify new or existing access roads.

2. The operations map (1" = 200' or other scale as determined necessary by the Division) shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned small mining activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-3-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;

2. Estimated width and length of any new roads to be constructed;

3. An estimate of the total number of surface acres to be disturbed by the mining operation.

4. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) to be extracted, moved, or proposed to be moved, relating to the mining operation.

R647-3-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-3-108.;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-3-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface

diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111. Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112. Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-3-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-3-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

14. Where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

R647-3-110. Variance.

1. The operator may request a variance from Rule R647-3-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to where a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-3-111. Surety.

1. After receiving notification that the notice of intention is complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation of similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11, the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts; and

4.16. The Board may approve a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as the Division deems reclamation complete. The Division will promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling, regrading, or vegetation establishment has been successfully performed and the residual amount of retained surety is determined adequate to insure completion.

6. The amount of reclamation surety may be adjusted:

6.11. As required by a revision in the Notice of Intention under R647-3-115;

6.12. As a result of a periodic review by the Division conducted no more frequently than at 3 year intervals unless agreed to by the operator, which shall take into account inflation/deflation based upon an acceptable Costs Index; or

6.13. At the request of the operator.

7. Notwithstanding any other provision of these rules, for operations where the surety is in the form of a Board-approved agreement under Section 40-8-14(3), the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.

R647-3-112. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the complete notice of intention, and fails or refuses to comply with R647-3-107, R647-3-108, or R647-3-109, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where reclamation surety has been filed with another governmental agency, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

3.11. The forfeited surety shall be used only for the reclamation of the land to which is relates, and any residual amount returned.

R647-3-113. Notification of Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the [~~temporary~~] suspension of small mining operations[~~.~~] that does not exceed two (2) years.

3. In the case of a termination of mining operations or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall[~~, upon~~]:

3.11 Monitor and maintain the site in accordance with each requirement of the operation practices in R647-3-107.

3.12 Upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period beyond two years if warranted.

4. The operator shall give the Division prompt written notice of a [~~termination or~~]suspension of small mining operations that has exceeded or is expected to exceed five (5) years, or of a shut down. Upon receipt of notification, the Division shall, within 30 days, [~~make an inspection of the property~~]arrange to inspect the property. The notice of suspension or shut down will include information about the

status of the small mining operation, the status of compliance with these rules, the probable future status of the land affected, and if applicable the estimated date mining operations are to resume.

5. If the operator does not provide the notice required by R647-3-113.4, the Division shall serve written demand on the operator requiring that the operator provide the notice required by R647-3-113.4 within 30 days of receipt of the Division's demand letter.

6. An operator who has provided notice under R647-3-113.4 or R647-113.3, may remain in suspension so long as the operator:

6.11. Monitors the property as frequently as necessary, but no less than one time per year, to confirm the property is in a safe environmentally stable condition;

6.12. Maintains the property in a safe, environmentally stable condition in accordance with R647-3-107.1 through R647-3-107.4;

6.13. Maintains adequate reclamation surety; and

6.14. Continues to pay permit fees required by R647-3-101.5 and submits annual reports required by R647-3-117.

7. Small Mining operations that are in suspension for longer than five (5) years will be reevaluated on a regular basis and shall no less than every five years provide an update of the report required by R647-3-113.4 or .5 which shall be evaluated by the Division for compliance with requirements of R647-3-113.6.11 through 6.14.

[~~5. Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional~~]

8. The Division may require additional interim reclamation or stabilization measures [~~may be required in order~~]reasonably necessary to ensure operator compliance with R647-3-113.6.12 for a small mining operation to remain in a continued state of suspension. [~~Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10 year period and shows good cause for a longer suspension period.~~]In accordance with R647-3-113.5.12., the Division will periodically evaluate the reclamation surety for operations in suspension and require changes as needed.

9. The Division may, thirty (30) days after the operator's receipt of written notice and findings from the Division, determine mining operations are or have been shut down by demonstrating in written findings that the operator:

9.11. Failed to file the annual report under R647-3-117 and pay permit fees under R647-3-101.5; or

9.12. Failed to provide notice required by the Division under R647-3-113.4 and failed to respond to a request to file such notice under R647-3-117.5; or

9.13. Failed to maintain the property in a safe, environmentally stable condition in accordance with the requirements in R647-3-107.1 through 107.4 as applicable.

10. The operator may, within thirty (30) days of receipt of written notice and findings as set forth at 7.11, 7.12, or 7.13, provide a written justification for its failure or comply. If the Division finds the justification to be reasonable, the failure to comply excusable, or no undue prejudice from the non-compliance, the determination of shut down shall be withdrawn. Neither this provision, nor a written justification, if any, shall serve to preclude, limit or otherwise prejudice any other administrative remedies or procedures available to an operator under applicable laws or rules.

11. An operator who ends a suspension and resumes mining operations shall notify the Division within a reasonable time after resuming mining operations that the operator has resumed mining operations. If operations have been in suspension for more than five (5) years, or were shut down for more than five (5) years, resumption of mining shall require compliance through R647-3-111.

R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond five acres of surface disturbance in an incorporated area of a county or ten acres in an unincorporated area of a county, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R647-3-115. Revisions.

1. Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised.

2. Division approval of a revision of small mining operations is not required but the operational change may not be implemented until the Division determines that the revised NOI is complete.

3. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any point in time during the revised small mining operations, the Division may undertake a recalculation of the surety amount as provided in R647-3-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is approved by the Division.

4. If the acreage within an approved small mining operation is later annexed into an incorporated area of a county, the permit may continue as a small mining operation. If the operator of such small mining operation subsequently proposes an increase of the disturbed acres, the current definitions for small or large mining operations would apply as appropriate.

R647-3-116. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must post adequate reclamation surety and assume full responsibility for all disturbances of the permitted operation. The form and amount of surety must be approved by the Division for the transfer to be complete.

R647-3-117. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

1.11. The location of the operation and the number and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. New surface disturbances created during the year;

1.14. The reclamation work performed during the year[~~.~~];

1.15. A narrative description of ore extraction, on-site primary processing, exploration, site development work, maintenance, reclamation, and other work performed at the mine site during the year;

1.16. If notice has been provided or required pursuant to R647-3-113.4 or 113.5, the annual report shall include a narrative description of work performed to comply with R647-3-113.6.11 through 6.13;

1.17. The date suspension began or is anticipated to begin; and

1.18. Any other information required by the Division under R647-3-113.4 or 113.5.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R647-3-118. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

R647-3-119. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~October 26, 2011~~]2020
Notice of Continuation: January 24, 2018
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R647-4**	**Filing No. 52351**

Agency Information

1. Agency:	Natural Resources; Division of Oil, Gas, and Mining	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple, Suite 1210	
City, state:	Salt Lake City, Utah 84114	
Mailing address:	1594 West North Temple, Suite 1210	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Large Mining Operations

3. Purpose of the new rule or reason for the change:
The purpose of the rule is to establish requirements and procedures for a notice of intention for large mining operations within the Title R647 Minerals Regulatory Program. These rule changes are a result of finding an ambiguity in the rule after a public safety concern.

4. Summary of the new rule or change:
Rule R647-4 establishes filing requirements and review procedures within the Title R647 Minerals Regulatory Program rules. These rule changes amend the duration of the notice of intention to include a withdrawal of approval from the Board of Oil, Gas and Mining (Board) or Division of Oil, Gas, and Mining (Division), the notification of suspension or shut down of operations, and the reports required.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is a total of one state agency, the Division, that will be associated with these proposed rule changes. There is no estimated cost to the state, but these rule changes will benefit the Division by providing clearer language regarding mineral mines in suspension which will aid in employees being more efficient and decisive.
B) Local governments:
These rule changes will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There are a total of 559 small business mining operators (for a complete listing of NAICS codes use in this analysis, please contact the agency) in the state of Utah. There is no estimated fiscal cost to these businesses. There will be an estimated fiscal benefit to mining operators, who have mines in suspension, as they will not need to go before the Board when the mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine, however, it cannot be estimated how many mines will be in suspension for 10 years.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
These rule changes 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 mineral mine operators.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

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:

These rule changes will provide language clarity which will result in making employees more efficient and decisive, and will also reduce expenditures for attorney and related costs for a submittal of a matter for Board approval for mineral mine owners with mines in suspension.

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.		

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:	01/22/2020

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
12/11/2019	10:00 AM	DNR, 1594 West North Temple, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/30/2019

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

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	**Date:**	11/15/2019

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-4. Large Mining Operations.
R647-4-101. Filing Requirements and Review Procedures.

Prior to commencement of operations, a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) containing all the required information must be filed with and approved by the Division and the Division shall have approved the form and amount of reclamation surety.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due annually by the deadline in R647-4-121 for reports.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-4-102. Duration of the Notice of Intention and Withdrawal of Approval.

1. The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine[. However, the] unless the Board or Division withdraws the approval in accordance with R647-4-102.2. The Division may review the permit and require updated information and modifications when warranted.[Additionally, failure by the operator to pay permit fees required by R647-4-101(5) or]

2. An approved notice of intention may be withdrawn, after notice and opportunity for Board hearing, if:

2.11. The operator fails to pay permit fees required by R647-4-101.5;

2.12. The operator fails to maintain and update reclamation surety as required [may, after notice and opportunity for Board hearing result in a withdrawal of the approved notice of intention]by the Act.

2.13. After commencing mining operations, the operator substantially fails to perform reclamation or conduct mining operations so that reclamation can be accomplished in accordance with the approved mining and reclamation plan; or

2.14. There have been no mining operations on the land affected for a continuous period in excess of five (5) years, and either the operator is not authorized to remain in suspension under R647-4-117.6, or that operations have been shut down for the entire period.

2.15. If, after notice, the operator fails to timely request a hearing before the Board, the Division may, in accordance with R647-4-1-2.2, withdraw an approved notice of intention.

2.16. If the operator requests a hearing before the Board, the Board shall conduct the hearing *de novo*, and the Division may not withdraw an approved notice of intention until conclusion of the hearing, and the Board issues an order to withdraw the notice of intention.

3. If a notice of intention is withdrawn, the Division will notify the operator in writing that it must commence complete reclamation work within 90 days and diligently proceed with such work as directed by the Division.

R647-4-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-4-104	Operator(s), Surface and Mineral Owner(s)
R647-4-105	Maps, Drawings and Photographs
R647-4-106	Operation Plan
R647-4-108	Hole Plugging Requirements
R647-4-109	Impact Assessment
R647-4-110	Reclamation Plan
R647-4-112	Variance

R647-4-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R647-4-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water

wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 200' or other scale as determined necessary by the Division. The following information shall be included on the surface facilities map:

2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate bonding and reclamation practices for the site;

3.18. Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

5. Copies of the underground and surface mine development maps.

R647-4-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used on-site, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R647-4-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

10. Information regarding the amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved or proposed to be moved.

R647-4-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-4-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-4-109. Impact Assessment.

The operator shall provide a general narrative description identifying potential surface and/or subsurface impacts. This description will include, at a minimum:

1. Projected impacts to surface and groundwater systems;

2. Potential impacts to state and federal threatened and endangered species or their critical habitats;

3. Projected impacts of the mining operation on existing soil resources;

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety;

5. Actions which are proposed to mitigate any of the above referenced impacts.

R647-4-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left on-site, including a map showing the location of such materials upon the completion of reclamation;

5. A planting program as best calculated to revegetate the disturbed area.

5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation.

6. A statement that the operator will conduct reclamation as required by these rules.

R647-4-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an

isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

R647-4-112. Variance.

1. The operator may request a variance from Rule R647-4-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the approved notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements will be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the final amount of surety required to reclaim the mine site. The surety amount will be based upon (a) the technical details of the approved mining and reclamation plan, (b) the proposed post mining land use, and (c) projected third party engineering and administrative costs to cover Division expenses incurred under a bond forfeiture circumstance. An operator's surety estimate will be accepted if it is accurate and verifiable. The Division may accept surety estimates based upon the Minerals Reclamation Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. The Board may approve a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling, regrading or vegetation establishment has been successfully performed and the residual amount of retained surety is determined adequate to insure completion of reclamation.

6. The amount of reclamation surety may be adjusted:

6.11. If required to address changes in the reclamation plan due to an amendment or revision to the Notice of Intention under R647-4-118 and R647-4-119;

6.12. As the result of a periodic review by the Division conducted no more frequently than at 5 year intervals unless agreed to

by the operator; which shall take into account inflation/deflation based upon an acceptable Costs Index; or

6.13. At the request of the operator.

7. Notwithstanding any other provision of these rules, for operations where the surety is in the form of a Board-approved agreement under Section 40-8-14(3), the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.

R647-4-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with other governmental agencies, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

R647-4-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R647-4-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

(1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Division in accordance with UCA 40-8-13, following which hearing the Division shall issue its decision.

R647-4-117. Notification of Suspension or [~~Termination~~]Shut Down of Operations.

1. The operator need not notify the Division of [~~the temporary~~]a suspension of mining operations that does not exceed two years. The operator may elect to notify the Division of such a suspension by disclosing that mining operations are, or will be, in suspension in the report required by R647-4-121.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall[~~, upon request,~~] notify the Division in writing or in the report required by R647-4-121.

2.11. The notification shall include a statement describing the operator's efforts to monitor and maintain the site in a safe, environmentally stable condition, and the date of the last self-inspection. The operator will keep written records of self-inspections and make them available to the Division upon request.

2.12. Upon request the operator shall furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate[~~. The Division may grant an extended suspension period if warranted by a showing of good cause by the operator~~] and consistent with the rules under Title R647.

3. The operator shall give the Division prompt written notice of a [~~termination or~~]suspension of large mining operations that has exceeded or is expected to exceed five (5) years, or of a shut down. Upon receipt of notification, the Division shall, within 30 days, [~~make an inspection of the property~~]arrange to inspect the property. The notice of suspension or shut down will include information about the status of the large mining operation, the status of compliance with these rules, the probable future status of the land affected, and if applicable the estimated date mining operations are to resume.

4. If the operator does not provide the notice required by R647-4-117.3, the Division may require that the notice be provided.

5. An operator who has provided notice under R647-4-117.3 or R647-4-117.4 may remain in suspension so long as the operator:

5.11. Monitors the property as frequently as necessary, but no less than one time per year, to confirm the property is in a safe, environmentally stable condition;

5.12. Maintains the property in a safe, environmentally stable condition in accordance with the requirements in R647-4-107, as applicable;

5.13. Maintains adequate reclamation surety; and

5.14. Continues to pay permit fees required by R647-4-101.5 and submits annual reports required by R647-4-121.4.

6. Large mining operations that [~~have been approved for an extended~~]are in suspension [~~period~~]for longer than five (5) years will be reevaluated [~~on a regular basis~~]by the Division at least every five (5) years. [~~Additional~~]The Division may require additional interim reclamation or stabilization measures [~~may be required in order~~]reasonably necessary to ensure operator compliance with R647-4-117.5.12 for a large mining operation to remain in a continued state of suspension. [~~Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.~~]In accordance with R647-4-113.6.12, the Division will periodically evaluate the reclamation surety for operations in suspension and require changes as required by R647-4-113.6.

7. The Division may, after notice to the operator, determine mining operations are or have been shut down by demonstrating that the operator:

7.11. Fails to file the annual report under R647-4-121 and pay permit fees under R647-4-101.5;

7.12. Fails to provide notice required by the Division under R647-4-117.3 and fails to respond to a request to file such notice under R647-4-117.4;

7.13. Fails to maintain the property in a safe, environmentally stable condition in accordance with the requirements in R647-4-107.1 through 107.4, as applicable; or

7.14. Fails to comply with any Division requirements under R647-4-117.5.15.

7.15. In the event the Division makes a determination that a mining operation is shut down due to a failure to comply with any of the provision of R647-4-117.6.11 through R647-4-117.6.14, the operator may within 30 days of the notice of the determination, provide a written justification for its failure to comply, and if the Division finds the justification to be reasonable, the failure to comply excusable, or no undue prejudice from the non-compliance, it shall withdraw the determination. Neither this provision, nor a written justification, if any, shall serve to preclude, limit, or otherwise prejudice any other administrative remedies or procedures available to an operator under applicable laws or rules.

8. An operator who ends a suspension and resumes mining operations shall notify the Division within a reasonable time after resuming mining operations that the operator has resumed mining operations. If operations have been in suspension for more than five years, or were shut down for more than five years, resumption of mining shall require compliance with the current rules at R647-4-102 through R647-4-113, as applicable, to the extent the current rules would have applied to the operations had it continued mining during the period of suspension or shut down.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five acres or less in an incorporated area of a county or ten acres or less in an unincorporated area of a county may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R647-4-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R647-4-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R647-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

1.14. A narrative description of ore extraction, on-site primary processing, exploration, site development work, maintenance, reclamation, and other work performed at the mine site during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R647-4-105.

3. If an operator is in suspension under R647-4-117, the report submitted by the operator must include the information required by R647-4-121.1 and 121.2, as applicable, and:

3.11. The date suspension began or is anticipated to begin;

3.12. The date of the last self-inspection and the results of that inspection including, but not limited to, whether the property remains in a safe, environmentally stable condition;

3.13. Any steps taken to return the property to, or maintain the property in, a safe, environmentally stable condition; and

3.14. Any other information required by the Division under R647-4-117.2.12.

4. The operator shall keep and maintain timely records relating to [~~his~~]the operator's performance under the Act[~~,~~] and shall make these records available to the Division upon request.

R647-4-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~October 26, 2011~~]2020
Notice of Continuation: January 24, 2018
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R647-5**	**Filing No. 52352**

Agency Information

1. Agency:	Natural Resources; Division of Oil, Gas, and Mining	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple, Suite 1210	
City, state:	Salt Lake City, Utah 84114	
Mailing address:	1594 West North Temple, Suite 1210	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Administrative Procedures

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

The purpose of the rule is to establish requirements and procedures for formal and informal proceedings within the Title R647 Minerals Regulatory Program. These rule changes are a result of finding an ambiguity in the rule after a public safety concern.

4. Summary of the new rule or change:

Rule R647-5 establishes the formal and informal procedures of the Title R647 Minerals Regulatory Program.
These rule changes amend the rule references to reflect the proposed changes in Rules R647-1through R647-4.

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, but these rule changes will benefit the Division by providing clearer language regarding mineral mines in suspension which will aid in employees being more efficient and decisive.

B) Local governments:

These rule changes will not affect local governments.

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

There are a total of 559 small business mining operators (for a complete listing of NAICS codes use in this analysis, please contact the agency) in the state of Utah. There is no estimated fiscal cost to these businesses as these rule changes only add an additional question to a form the businesses are already completing annually. There will be an estimated fiscal benefit to mining operators who have mines in suspension since they will not need to go before the Board of Oil, Gas and Mining (Board) when their mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine. It cannot be estimated how many small business mining operators will have a mine in suspension and be affected by these rule changes.

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

There are 36 non-small businesses in the Mining industry (For a complete listing of NAICS codes used in this analysis, please contact the agency) in Utah. There is no estimated fiscal cost to these businesses as these rule changes only add an additional question to a form the businesses are already completing annually. There will be an estimated fiscal benefit to mining operators who have mines in suspension since they will not need to go before the Board when their mine has been in suspension for 10 years. The fiscal benefit is estimated at $1,500 per suspended mine. It cannot be estimated how many non-small business mining operators will have a mine in suspension and will be affected by these rule changes.

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

These rule changes 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 mineral mine operators.

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

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0

Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

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:

These rule changes will provide language clarity which will result in making employees more efficient and decisive, and will also reduce expenditures for attorney and related costs for a submittal of a matter for Board approval for mineral mine owners with mines in suspension.

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.		

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:	01/22/2020

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
12/11/2019	10:00 AM	DNR, 1594 West North Temple, Salt Lake City, UT

10. This rule change MAY* become effective on:	01/30/2019

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

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	**Date:**	11/15/2019

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-5. Administrative Procedures.
R647-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining", the R641 rules, include the following: R647-2-112, Failure to Reclaim, Forfeiture of Surety; R647-3-112, Failure to Reclaim, Forfeiture of Surety; R647-[~~3-113.5~~]4-102, Over 10-Year Suspension; R647-4-114, Failure to Reclaim, Forfeiture of Surety[~~; R647-4-117.4, Over 10-Year Suspension~~].

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R647-5 include the following: R647-2-101, Notice of Intent to Commence Mining Operations; R647-2-102, Extension; R647-2-107, Operation Practices; R647-2-108, Unplugged Over 30 Days/Alternative Plan; R647-2-109, Reclamation Practices Variance; R647-2-109.13, Revegetation Approval; R647-2-110, Variance, Revocation or Adjustment of Variance; R647-2-111, Release of Surety; R647-2-114, New or Revised Notice of Intention; R647-3-101, Notice of Intention to Commence Small Mining Operations; R647-3-107, Operation

Practices; R647-3-108, Unplugged over 30 Days/Alternate Plan; R647-3-109, Reclamation Practices Variance; R647-3-109.13, Revegetation Approval; R647-3-110, Variance, Revocation, or Adjustment of Variance; R647-3-111, Release of Surety; R647-3-113.1, Waiver, Annual Report; R647-3-113.3 and R647-3-113.4, Termination or Suspension; R647-3-113.5, Reevaluations, Reclamation; R647-3-114, Mine Enlargement; R647-3-115, Revisions; R647-3-117, Report Waiver; R647-4-101, Notice of Intention to Commence Large Mining Operation; R647-4-102, Updated Information or Modifications; R647-4-107, Operation Practices; R647-4-108, Unplugged over 30 Days/Alternate Plan; R647-4-111, Reclamation Practice, Variance; R647-4-111.13, Revegetation Approval; R647-4-112, Variances, Revocation or Adjustment; R647-4-113, Release of Surety; R647-4-117.3 and R647-4-117.4, Termination or Suspension; R647-4-118, Revisions; R647-4-119, Amendments; R647-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R647-5 include the following:

R647-2-111, Surety, Form and Amount; R647-3-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount.

R647-5-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R647-5 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R647-5. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R647-5-103. Definitions.

Definitions as used in these rules may be found under R647-1-106.

R647-5-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

1.12. 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:

2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

2.11.112 The Division's file number or other reference number;

2.11.113 The name of the adjudicative proceeding;

2.11.114 The date that the Notice of Agency Action was mailed;

2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63G-4-202 and 63G-4-203 of the Utah Code Annotated (1953, as amended), if applicable;

2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R647-5-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, ensure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63G-4-202 and 63G-4-203 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R647-5-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

1.11. Conversion of the proceeding is in the public interest; and

1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R647-5-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R647-5-104.2.12.111 and R647-5-104.2.14, whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. 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.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Division Director shall issue a written, signed order that states the following:

11.11 The decision;

11.12 The reasons for the decision;

11.13 A notice of the right to appeal to the Board;

11.14 The time limits for filing an appeal.

12. The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings.

13. Unless waived by the intended recipient of the order, a copy of the Division Director's order shall be promptly mailed to each of the parties.

14. The Division may record any hearing. Any party, at his or her own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute.

16. Default. The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order of default shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Division Director 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. After issuing the order of default, the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party. Notwithstanding this, in an adjudicative proceeding that has no parties other than the Division and the party in default, the Division Director shall, after issuing the order of default, dismiss the proceeding.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Board within ten (10) days of the issuance of the order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, and shall also state the grounds for the appeal and the relief requested.

18. Emergency Orders. Notwithstanding the other provisions of these rules, the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-8-6. 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.

18.11. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

18.11.111 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

18.11.112 The threat requires immediate action by the Division Director or Board member.

18.12. Limitations. In issuing its Emergency Order, the Division Director or Board member shall:

18.12.111 Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

18.12.112 Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings;

18.12.113 Give immediate notice to the persons who are required to comply with the order;

18.12.114 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 before the Board of Oil, Gas and Mining.

R647-5-107. Exhaustion of Administrative Remedies.

1. Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

2. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under the Rules of Practice and Procedure before the Board of Oil, Gas and Mining. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be contested and processed formally are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

R647-5-108. 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.

R647-5-109. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, other remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R647-5-110. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 of the Utah Code Annotated (1953, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

R647-5-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~February 23, 2006~~]2020
Notice of Continuation: January 24, 2018
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R746-314**	**Filing No. 52323**

Agency Information

1. Agency:	Public Service Commission	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state:	Salt Lake City UT 84111	
Mailing address:	PO BOX 4558	
City, state, zip:	Salt Lake City UT 84114-4558	
Contact person(s):		
Name:	**Phone:**	**Email:**
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Rules Governing the Community Renewable Energy Program

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

This rule implements legislative changes enacted under H.B. 411, passed in the 2019 General Session, the Community Renewable Energy Act.

4. Summary of the new rule or change:

This rule establishes definitions and rules to govern implementation of the Community Renewable Energy Program as the Legislature required in passing the Community Renewable Energy Act. The proposed rule is the product of a stipulation among stakeholders as to how to implement the Community Renewable Energy Act. The Public Service Commission (PSC) made one minor change to the stipulated language in Subsection R746-314-401(2) because the PSC does not have authority to give its administrative rules precedence over any statute.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

State government facilities that are located in a community that elects to participate in a community renewable energy program may incur increased electricity costs but only in the event those facilities choose not to opt-out of the program. This scenario is created by the statute, not by implementing this rule.

B) Local governments:

Local governments that elect to participate in a community renewable energy program may incur administrative costs and increased electricity costs. This

scenario is created by the statute, not by implementing this rule.

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

Small businesses that are located in a community that elects to participate in a community renewable energy program may incur increased electricity costs but only in the event the businesses choose not to opt-out of the program. This scenario is created by the statute, not by implementing this rule.

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

Businesses that are located in a community that elects to participate in a community renewable energy program may incur increased electricity costs but only in the event the businesses choose not to opt-out of the program. This scenario is created by the statute, not by implementing 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***)**:**

Persons that are located and receive electrical service within a community that elects to participate in a community renewable energy program may incur increased electricity costs but only in the event those persons choose not to opt-out of the program.

F) Compliance costs for affected persons:

Residents of a community that elects to participate in a community renewable energy program may incur increased electricity costs but only in the event the residents choose not to opt-out of the program. This scenario is created by the statute, not by implementing 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.)

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

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

Any fiscal impact is contingent on two things: the election of a municipality to participate in the community renewable energy program, and the decision of each resident of that municipality whether or not to opt-out of the program. Those impacts and contingencies are created by the statute that creates the program, not by the implementing rules.

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

Thad LeVar, Chair

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):

Sections 54-17-901 through 54-17-909		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020
*NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Thad LeVar, Chair	**Date:**	11/13/2019

R746. Public Service Commission, Administration.
R746-314. Rules Governing the Community Renewable Energy Program.
R746-314-101. Definitions.

(1) "Annexed customer" means a utility customer with an electric service address located within an area annexed into a participating community after the implementation date, beginning on the date that such person becomes an eligible customer.

(2) "Cancelation date" means the last day of the applicable cancelation period.

(3) "Cancelation period" means the period during which a participating customer may opt-out of the program without incurring a termination fee. The cancelation period shall be, as approved by the Commission:

(a) for all eligible customers on the implementation date, at least three billing cycles immediately following the applicable commencement date; or

(b) for a new customer or annexed customer, the latter of

(i) the period specified in (a), above, or

(ii) the 60-day period immediately following the applicable commencement date.

(4) "Commencement date" means:

(a) the last day of the 60-day implementation period for an eligible customer on the implementation date, which is the date by which such eligible customer must opt-out of the program in order to avoid paying any program rates, and the first day of such customer's cancelation period; or

(b) the date when the first opt-out notice is sent to a new customer or annexed customer, which is the first day of the cancelation period for such customer.

(5) "Eligible community" means a Utah municipality or county that has adopted a resolution as specified in Subsection 54-17-903(2)(a) and that continues to indicate its intent to become a participating community, including by entering into the utility agreement and the governance agreement.

(6) "Eligible customer" means a person that is a customer of the utility receiving retail electric service at a location within the boundary of a participating community, and that is identified by the utility with a tax identifier associated with a participating community, excluding any residential customer as specified in Subsection 54-17-905(5) that is then receiving net metering service from the electric utility under the utility's Utah electric service schedule 135.

(7) "Exit notice" means a notice provided to the utility by an exiting customer that indicates the exiting customer no longer wishes to participate in the program, and that also includes the exiting customer's name, account number, service address, and the telephone number associated with the account.

(8) "Exiting customer" means a participating customer that elects to terminate its participation in the program after the cancelation date applicable to that participating customer.

(9) "Governance agreement" means an interlocal or other agreement entered into prior to the filing date of the application for Commission approval of the program, among eligible communities that intend to become participating communities and that establishes a decision-making process for program design, resource solicitation, resource acquisition, and other program issues and provides a means of ensuring that eligible communities and those that become participating communities will be able to reach a single joint decision on any necessary program issues.

(10) "Implementation date" means the date following program approval and adoption of an ordinance by all participating communities on which the first opt-out notice is sent to any eligible customer.

(11) "Implementation period" means the 60-day period beginning on the implementation date.

(12) "New customer" means a person other than an annexed customer that becomes an eligible customer within a participating community after the implementation date.

(13) "Opt-out notice" means a notice meeting the requirements of Subsection 54-17-905(1) including, as applicable, either or both of the following:

(a) "first opt-out notice," which is the first notice to be provided by a utility to an eligible customer, a new customer, or an annexed customer pursuant to Section R746-314-301; and

(b) "second opt-out notice," which is the second notice to be provided by a utility to an eligible customer, a new customer, or an annexed customer pursuant to Section R746-314-302.

(14) "Ordinance" means an ordinance adopted by an eligible community as required by Subsection 54-17-903(2)(c) in order to become a participating community.

(15) "Participating community" has the meaning specified in Subsection 54-17-902(10).

(16) "Participating communities' representative" is the person(s) or entity authorized to present the decisions and opinions of participating communities pursuant to the governance agreement.

(17) "Participating customer" has the meaning specified in Subsection 54-17-902(11).

(18) "Person" means an individual or any other legal entity.

(19) "Program" means a community renewable energy program approved by the Commission pursuant to Title 54, Chapter 17, Part 9, Community Renewable Energy Act.

(20) "Program rates" means the rates and fees charged to participating customers and exiting customers to recover all costs and expenses incurred by a utility to implement and operate the program in accordance with Subsection 54-17-904(4).

(21) "Renewable energy asset" has the meaning specified in Subsection 54-17-902(14) for a renewable energy resource, excluding resources specified in Subsection 54-17-902(14)(b)(i) and Subsection 54-17-902(14)(b)(ii).

(22) "Tax identifier" means an identifier used by the utility to designate meters and accounts that are associated with specific municipal or county taxing districts.

(23) "Termination fee" means the fee, if any, to be assessed on and charged to an exiting customer in accordance with Subsection 54-17-905(3)(c) and Section R746-314-306.

(24) "Utility" means a qualified utility as defined in Section 54-17-801.

(25) "Utility agreement" means a single agreement as required by Subsection 54-17-903(2)(b) entered into prior to the filing date of the application for Commission approval of the program between the utility and all eligible communities that intend to become participating communities.

R746-314-201. General Requirements.

(1) Spanish Language Requirements.

(a) To the extent an eligible customer has previously indicated a Spanish language preference to the utility, notices required by these rules to such customer shall be provided in Spanish.

(b) Each opt-out notice that is not provided in Spanish shall include a short statement written in Spanish either directing customers to a Spanish language version of the opt-out notice online, or to a telephone number, website, or email address where a Spanish language version can be requested or obtained.

(2) Customer Eligibility and Participation Requirements.

(a) A utility shall not be deemed to have violated these rules to the extent it enrolls a customer in the program that, based on the tax identifier available to the utility, or, for annexed customers, a list of service addresses cross-referenced to a list provided by the annexing participating community, appears to be located within a participating community, provided that:

(i) a customer who is accidentally enrolled in the program, despite not being an eligible customer, shall be unenrolled with no termination fee, and

(ii) the utility shall refund such accidentally enrolled customer the difference between the program rates and charges assessed for the lesser of the time the customer was accidentally enrolled or one year.

(b) A participating customer that moves or changes its service address from one location within the program boundaries to another location within the program boundaries shall continue to be a participating customer at the new location.

(c) A participating customer that moves or changes its service address from a location within the boundaries of the program to a location outside the program is no longer an eligible customer, and the utility shall remove such customers from the program.

(d) A participating customer that closes its account with the utility is no longer an eligible customer with respect to that account, and the utility shall remove such customer account from the program.

(e) If a person attempts to evade these program rules through a change in name, identity or legal status, or otherwise, the utility, a participating community, or a representative of the program may seek a determination from the Commission that the person must abide by the program rules, including payment of any applicable termination fee.

R746-314-301. First Opt-Out Notice.

(1) The utility shall provide a first opt-out notice, separate from standard monthly bills, to each eligible customer, new customer, or annexed customer no earlier than 60 days and no later than 30 days before the commencement date applicable to such customer.

(2) The utility shall, in all material respects, use the form and content of the first opt-out notice as approved by the Commission.

(3) The utility shall send the first opt-out notice:

(a) via a method determined to be adequate by the Commission, and

(b) in person to any eligible customer with an electric load of one megawatt or more measured at a single meter.

(4) The first opt-out notice shall include at least the following information:

(a) a description of the program, including eligibility requirements;

(b) for any eligible customer on the implementation date, the applicable commencement date;

(c) the applicable cancelation date;

(d) a description of the actions taken by the participating communities and the utility to secure final authorization of the program;

(e) a description of the services and resources that the program is intended to provide;

(f) the projected range of program rates and terms of participation as approved by the Commission, including:

(i) projected billing impacts in the first year of the program at various usage levels using comparisons to the rates then applicable to Utah customers in the same rate class who are not participating in the program; and

(ii) a statement that program rates are estimated and subject to change, including a description of how and when rates may change;

(g) a statement informing the customer of the following:

(i) either:

(A) for notice to an eligible customer on the implementation date, that its electric accounts will be automatically included in the program beginning on the commencement date unless the customer affirmatively opts-out prior to the commencement date; or

(B) for notice to a new customer or annexed customer that its electric account has been automatically included in the program and will remain in the program unless the customer affirmatively opts-out;

(ii) that, unless the customer affirmatively opts-out of the program by the cancelation date, it may incur a termination fee;

(iii) the information the customer must provide to opt-out; and

(iv) how the customer may affirmatively opt-out;

(h) the Commission-approved amount of, or method for calculating, any then applicable termination fee and how and when the termination fee may change; and

(i) a link to a website or websites where further details can be found.

R746-314-302. Second Opt-Out Notice.

(1) The utility shall provide a second opt-out notice separate from standard monthly bills to each eligible customer, new customer, or annexed customer, at least 15 days after the first opt-out notice was provided and at least 7 days before:

(a) the commencement date for the second opt-out notice sent to eligible customers during the implementation period; or

(b) the cancelation date for the second opt-out notice to a new customer or annexed customer.

(2) The utility shall, in all material respects, use the form and content of the second opt-out notice as approved by the Commission.

(3) The utility shall send the second opt-out notice:

(a) via a method determined to be adequate by the Commission, and

(b) in person to any eligible customer with an electric load of one megawatt or more measured at a single meter.

(4) The second opt-out notice shall include at least the information listed in Subsection R746-314-301(4).

R746-314-303. Notice to New Customers and Customers in Annexed Areas.

(1) A new customer or an annexed customer shall automatically be enrolled in the program, provided that:

(a) the utility shall provide a first opt-out notice and second opt-out notice to each new customer or annexed customer as specified in Sections R746-314-301 through R746-314-302; and

(b) a new customer or annexed customer may provide notice of its intent to opt-out of the program without incurring a termination fee by providing an opt-out notice to the utility prior to the applicable cancelation date, using any of the methods identified in an opt-out notice.

R746-314-304. Customers Opting-In to the Program.

(1) An eligible customer located within a participating community that is not then a participating customer may elect to participate in the program by providing notice to the utility. Following such notice, the customer will be enrolled in the program starting with the billing period following the notice in which it is reasonably practicable for the utility to enroll such customer. The reasonably practicable billing period shall be based on when the notice was received and the customer's bill cycle. Following enrollment, the customer becomes a participating customer and is subject to all program requirements, including exit notices and termination fees.

R746-314-305. Requirements to Exit the Program After the Cancelation Date.

(1) A customer may exit the program after the applicable cancelation date, as follows:

(a) the exiting customer may provide an exit notice to the utility in the manner approved by the Commission, which may include means for providing notice via the internet, telephone, or US mail, and shall pay any applicable exit fee;

(b) the exiting customer is responsible for program rates up to the date the customer is unenrolled from the program;

(c) within 60 days after the utility's receipt of an exit notice, if not previously paid, the utility shall bill the exiting customer the applicable termination fee, if any; and

(d) the utility shall unenroll the exiting customer from the program beginning with the billing period that it is reasonably practicable for the utility to unenroll such customer following the later of:

(i) the date when the exit notice was received, or

(ii) the date that any applicable termination fee has been paid.

R746-314-306. Termination Fee.

(1) The termination fee for an exiting customer shall be calculated and charged as approved by the Commission with the application under Section R746-314-401, or, thereafter, as approved by the Commission from time to time. The amount of, or method for, calculating the termination fee shall be posted on the internet in a manner approved by the Commission.

(2) The approved termination fees may vary by customer class, usage level, or for other reasons that the Commission approves as being in the public interest.

(3) Termination fees, if any, applicable to a residential participating customer who moves outside of the program boundaries or who ceases to be an electric customer of the utility shall be as approved by the Commission from time to time.

(4) Termination fees may not be considered as part of the unpaid amount for any residential customer for purposes of account termination or disconnection under Section R746-200-7.

R746-314-401. Program Application and Approval Requirements; Rates; Participating Communities.

(1) The utility shall file an application with the Commission for approval of the program requirements and design.

(2) Each eligible community identified in the application filed with the Commission shall, as specified in Subsection 54-17-904(5), be a party to the application proceeding and, for purposes of such proceeding:

(a) shall comply with the Commission's discovery rules; and

(b) may not object to a discovery request on the basis that the request is a records request under Title 63G, Chapter 2, Government Records Access and Management Act.

(3) The utility shall include at least the following in support of its application:

(a) the name of each such eligible community;

(b) maps depicting the geographic boundaries of each such eligible community;

(c) the proposed ordinance language that each such eligible community must adopt to become a participating community;

(d) the number of customers served by the utility within the geographic boundaries of each such eligible community, including:

(i) the number of customers served under each rate schedule within each such eligible community;

(ii) monthly kWh load for each customer class within each such eligible community; and

(iii) a ten-year load forecast for each customer class;

(e) projected program rates for each class of participating customer, including workpapers that provide:

(i) an explanation of the proposed rate design that covers at least the following:

(A) a description of how both fixed and variable cost components related to both the program and ongoing costs will be allocated to each customer class and recovered through the proposed program rates; and

(B) identification of other current or known rate adjustments applicable to the participating customers;

(ii) a reasonable range of projected rates based on high, medium, and low estimates of customer participation, along with an explanation for the estimation methodology, which may be based on other prior program experience; and

(iii) projected quantifiable costs and benefits of the program, with a demonstration of how they are reflected in the proposed program rates, excluding costs and benefits that do not directly affect the utility;

(f) a description of the proposed process for periodic, not more than annually, rate adjustment filings, including a proposed schedule or dates for such filings, which filings shall include:

(i) an accounting of program expenses;

(ii) the projected costs and revenues for the following year of the program; and

(iii) any proposed changes to program rates, termination fees, tariffs, or other associated program charges;

(g) proposed tariff changes to implement the program;

(h) the utility agreement;

(i) the governance agreement;

(j) a description of the plan proposed by each eligible community addressing low-income programs and assistance;

(k) the proposed solicitation process for acquiring renewable energy resources for the program in accordance with Section R746-314-402;

(l) the proposed form of opt-out notices;

(m) the projected implementation date for the program;

(n) other informational materials on the program to be provided or made available to eligible customers; and

(o) an explanation of how non-participating customers and the utility will not be subject to any program liabilities or costs.

(4) The Commission may approve the program if:

(a) the application meets all applicable requirements of the Utah Code and Commission rules; and

(b) the Commission finds that the program is in the public interest.

(5) Any rates approved by the Commission for participating customers:

(a) shall be based on the factors enumerated in Subsection R746-314-401(3)(d) and Subsection R746-314-401(3)(e); and

(b) may not result in a shifting of costs or benefits to customers of the utility that are not eligible or have elected not to participate in the program.

(6) Following a Commission order approving the program, an eligible community identified in the application must pass an ordinance as required by Subsection 54-17-903(2)(c) in order to become a participating community.

R746-314-402. Solicitation for Program Renewable Energy Resource, and Acquisition Approval Process.

(1) A renewable energy resource or program as specified in Subsection 54-17-902(14)(b)(i) or Subsection 54-17-902(14)(b)(ii) may be adopted or procured upon approval by the Commission based on a finding the same is reasonable and in the public interest.

(2) To the extent funds are collected from participating customers in excess of then-current costs, such funds may be utilized in a balancing account to help manage unanticipated program costs and expenses, or to help offset the impacts of customers exiting the program.

(3) Renewable energy assets shall be acquired for the program through a competitive solicitation process that provides an option for the utility to own or purchase the renewable energy assets, if the Commission finds that including such an option is not contrary to the interest of participating customers and other customers of the utility.

(4) For the proposed acquisition of a solar renewable energy asset, the proposed solicitation application, solicitation approval process, and resource acquisition approval shall be in accordance with the provisions of Sections R746-450-1 through R746-450-4 as applicable to a specific customer solicitation, except to the extent the Commission determines that any such provision should not be applicable. The proposed terms of the solicitation application and evaluation criteria under this subsection shall be developed by the utility and the participating communities' representative.

(5) For the acquisition of a non-solar renewable energy asset, the terms of the solicitation application and evaluation criteria under this subsection shall be jointly developed by the utility and participating communities' representative, and the solicitation application and approval process may either be in accordance with Subsection R746-314-402(4), or the utility may file an application with the Commission for approval of a solicitation that includes at least the following:

(a) a description of the solicitation process proposed and the manner in which the solicitation will be published;

(b) a copy of the complete proposed solicitation with any appendices, attachments, and draft pro forma contracts;

(c) descriptions of the criteria and the methods to be used by the utility and participating communities' representatives to evaluate bids, including the weighting and ranking factors to be used to evaluate bids;

(d) information directing interested parties to all questions and answers regarding the solicitation and solicitation process posted on an appropriate website;

(e) the utility's proposed cost accounting for management of the solicitation;

(f) a description of the utility's proposed mechanism to ensure the utility's personnel involved in evaluating bids and the utility's personnel involved in preparing any bids into the solicitation from the utility will be prevented from sharing information in a manner that may lead to unfair advantage or the perception of unfair advantage in the selection of a renewable energy resource, and how the utility will avoid its involvement in bid evaluation or selection from being affected by bias;

(g) sufficient information for the Commission to make the determinations required by Subsection R746-314-402(3); and

(h) any other information the Commission may require.

(6) Non-Solar Renewable Energy Asset Solicitation Approval Process.

(a) The Commission shall approve a solicitation process if it makes the following determinations:

(i) that the proposed solicitation and bid evaluation process will allow fair competition among all bidders, including the utility, if applicable;

(ii) that the solicitation process is consistent with applicable statutes and Commission rules; and

(iii) that the solicitation process is in the public interest.

(b) The Commission will provide public notice of the application. Interested persons may file comments on the application within 30 days of the notice. Interested entities shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the date the application is filed.

(7) Non-Solar Renewable Energy Asset Acquisition.

(a) If, following the conclusion of the Commission-approved solicitation process, the utility seeks to purchase a non-solar renewable energy asset selected through a Commission-approved solicitation, then the utility shall first file an application for approval of the purchase with the Commission, which shall include information sufficient for the Commission to make the following determinations:

(i) that the solicitation process approved by the Commission was complied with and adhered to in all material respects;

(ii) that the selection of the winning bid for a renewable energy resource was reasonable in light of the bids received, the explanation of the scoring process, and the input provided by the participating communities' representative; and

(iii) that the utility's purchase of the winning renewable energy resource is otherwise in the public interest.

(b) The Commission will provide public notice of the application. Interested persons may file comments on the application within 30 days of the notice. Interested persons shall have 15 days to respond to any comments. The Commission will hold a scheduling conference to set the time for public hearing. Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will set a hearing date that is within 75 days of the date the application is filed.

KEY: public utilities; renewable energy; community renewable energy
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 54-17-901 through 54-17-909

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R746-409-1**	**Filing No. 52338**

Agency Information

1. Agency:	Public Service Commission	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO BOX 45585	
City, state, zip:	Salt Lake City UT 84111-5585	
Contact person(s):		
Name:	**Phone:**	**Email:**
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
General Provisions
3. Purpose of the new rule or reason for the change:
Consistent with the Utah Code and federal requirements, the Public Service Commission has a rule in place, R746-409, that incorporates by reference provisions of the Code of Federal Regulations pertaining to pipeline safety. Section R746-409-1 presently incorporates the federal regulations "effective September 1, 2017." However, the federal rules have been amended since that date and the amendment sought here updates the reference to include such changes.
4. Summary of the new rule or change:
Consistent with the Utah Code and federal requirements, the Public Service Commission has a rule in place, R746-409, that incorporates by reference provisions of the Code of Federal Regulations pertaining to pipeline safety. Section R746-409-1 presently incorporates the federal regulations "effective September 1, 2017." However, the federal rules have been amended since that date and the amendment sought here updates the reference to include such changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
None--The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety such that recent federal amendments are reflected in the state rule. It should not affect the state budget.
B) Local governments:
None--The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety such that recent federal amendments are reflected in the state rule. It should not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
None--The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety such that recent federal amendments are reflected in the state rule. It should not affect small businesses.

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

None--The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety such that recent federal amendments are reflected in the state rule. It should not affect non-small businesses.

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

None--Businesses that perform work subject to the federal safety regulations may incur costs to comply under the existing rule, which is already incorporated by reference pursuant to Ann. Section 54-13-3. However, the amendments to the rule since September 1, 2017 are not anticipated to add to such costs. Therefore, the amendment should have no fiscal impact.

F) Compliance costs for affected persons:

None--Businesses that perform work subject to the federal safety regulations may incur costs to comply under the existing rule, which is already incorporated by reference pursuant to Section 54-13-3. However, the amendments to the rule since September 1, 2017 are not anticipated to add to such costs. Therefore, the amendment should have no fiscal impact.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

PSC Chair Thad LeVar 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 amendment should not impact businesses. Businesses that perform work subject to the federal safety regulations may incur costs to comply under the existing rule, which is already incorporated by reference pursuant to Section 54-13-3. However, the amendments to the rule since September 1, 2017 are not anticipated to add to such costs. Therefore, the amendment should have no fiscal impact.

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

Thad LeVar, Chair

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 54-13-3		

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Code of Federal Regulations, Title 49
Publisher	Office of the Federal Register

Date Issued	2019
Issue, or version	2019

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Michael Hammer, Administrative Law Judge	**Date:**	11/15/2019

R746. Public Service Commission, Administration.
R746-409. Pipeline Safety.
R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 20[~~17~~]19:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;
2. Part 191;
3. Part 192;
4. Part 198; and
5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

KEY: rules and procedures, safety, pipelines
Date of Enactment or Last Substantive Amendment: [~~January 9, 2018~~]2020
Notice of Continuation: March 31, 2016
Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R873-22M-29**	**Filing No. (Office Use Only)**

Agency Information

1. Agency:	Tax Commission
Building:	Utah State Tax Commission
Street address:	210 N 1950 W
City, state:	SLC, UT 84134
Mailing address:	210 N 1950 W
City, state, zip:	SLC, UT 84134
Contact person(s):	

Name:	**Phone:**	**Email:**
Jennifer Franklin	801-297-3901	jenniferfranklin@utah.gov
Jason Gardner	801-297-3902	jasongardner@utah.gov

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

General Information

2. Rule or section catchline:
Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to conform this section to current code and long-standing practice.
4. Summary of the new rule or change:
This filing amends this section to require renewal of a removable windshield disability placard biennially instead of annually. This change is consistent with existing statute as amended in HB 208, License Plate Renewal for Persons with Disabilities, passed in the 1999 General Session, and conforms the language of this section to the current and long-standing practice of the Motor Vehicle Division.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed amendment is not expected to have any fiscal impact on state government revenues or expenditures because it is consistent with current and long-standing practice.

B) Local governments:

This proposed amendment is not expected to have any fiscal impact on local governments' revenues or expenditures because it is consistent with current and long-standing practice.

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

This proposed amendment is not expected to have any fiscal impact on small businesses' revenues or expenditures because it is consistent with current and long-standing practice.

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

This proposed amendment is not expected to have any regulatory impacts on non-small businesses' revenues or expenditures because it is consistent with current and long-standing practice.

E) Persons other than small businesses, non-small businesses, state, or local government entities

This proposed amendment is not expected to have any fiscal impacts on persons other than small businesses' or local governments' revenues or expenditures because it is consistent with current and long-standing practice.

F) Compliance costs for affected persons:

The proposed amendment of this section is not expected to impose any additional compliance costs on affected persons because it is consistent with current and long-standing practice.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

Commissioner Rebecca Rockwell of the Utah State Tax Commission 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 amendment is consistent with current and long-standing Motor Vehicle Division practice.

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

Rebecca Rockwell, 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 41-1a-420		

Public Notice Information

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

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Rebecca Rockwell, Commissioner	**Date:**	11/14/2019

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-420.

(1) A removable windshield placard is a two-sided placard, renewable on [~~an annual~~]a biennial basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

(b) an identification number;

(c) a date of expiration which is [~~one year~~]two years from the later of the initial issuance of the placard or the most recent renewal of the placard; and

(d) a facsimile of the Great Seal of the State of Utah.

(2) Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

(a) The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

(b) An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

(c) A physician's certification is not required for renewal of a removable windshield placard.

(d) The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(e) The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(3) A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

(a) the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

(b) an identification number;

(c) a date of expiration not to exceed six months from the date of issuance; and

(d) a facsimile of the Great Seal of the State of Utah.

(4) Upon application, a temporary removable windshield placard shall be issued.

(a) The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(b) Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

(c) The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

(d) The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

(5) Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

KEY: taxation, motor vehicles, aircraft, license plates
Date of Enactment or Last Substantive Amendment: [~~August 22, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R986-700**	**Filing No. 52321**

Agency Information

1. Agency:	Workforce Services - Employment Development	
Building:	Olene Walker Building	
Street address:	140 E Broadway (300 S)	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state, zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Child Care Assistance

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

During the 2019 General Session, the Legislature passed S.B. 159, Department of Workforce Services Amendments, which directed the Department of Workforce Services, Office of Child Care (OCC) to make rules regarding provider eligibility to receive subsidy funds and grants from OCC.

4. Summary of the new rule or change:

This amendment adds a section regarding definitions and acronyms. The amendment repeals the sections regarding Eligible Providers and Provider Settings, Provider Rights and Responsibilities, and creates new, smaller sections regarding provider eligibility. Those sections include: Provider General Provisions, Eligible Provider, Ineligible Provider, Ineligible Provider Setting, Family Friend and Neighbor (FFN) Provider, Appeals of Child Care Licensing (CCL) Adverse Action, Approved Provider Status, Approved Provider Responsibilities, Appropriate Use of Child Care Assistance (CC), Withholding of CC Subsidy Payments, Audits and Investigations, Appeals, and Provider Grant Eligibility. The new sections describe how a child care provider can be eligible to receive child care assistance subsidy funds and OCC grant funds; and the circumstances under which a child care provider may lose eligibility for CC and grant funds. This amendment clarifies when a client who is working as a caregiver may receive CC, the amount of CC, the use of CC in unusual circumstances, and how a finding that a provider has committed an IPV may affect the Enhanced Subsidy Grant.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule amendment is not expected to have any fiscal impact on state budget revenues or expenditures that were not already accounted for by S.B. 159 (2019).

B) Local governments:

This rule amendment is not expected to have any fiscal impact on local governments' revenues or expenditures that were not already accounted for by S.B. 159 (2019).

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

This rule amendment is not expected to have any fiscal impact on small businesses' revenues or expenditures that were not already accounted for by S.B. 159 (2019).

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

This rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures that were not already accounted for by S.B. 159 (2019).

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 amendment is not expected to have any fiscal impact on other persons' revenues or expenditures that were not already accounted for by S.B. 159 (2019).

F) Compliance costs for affected persons:

The proposed rule changes are not expect to cause any compliance costs for affected persons because the proposed rule changes do not create any new administrative fees.

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 Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0

Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Workforce Services, Jon Pierpont, has reviewed and approved this fiscal analysis.

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

After a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

Jon Pierpont, 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 35A-3-203(12)	Section 35A-3-310	Section 53F-5-210

Public Notice Information

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

A) Comments will be accepted until:	12/31/2019

10. This rule change MAY* become effective on:	01/07/2020

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

Agency Authorization Information

Agency head or designee, and title:	Jon Pierpont, Executive Director	**Date:**	11/09/2019

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701.1. Definitions and Acronyms.

(1) The terms used in this rule are defined in Sections 35A-3-102, and 35A-3-201.

(2) In addition:

(a) "ALJ" means Administrative Law Judge.

(b) "Applicant" means any person requesting CC.

(c) "CC" means Child Care assistance or subsidy.

(d) "Certification period" as it relates to a recipient of CC is the period of time for which CC is presumptively approved.

(e) "Client" means an applicant for, or recipient of, CC.

(f) "Child Care Provider" or "Provider" means any person, individual or corporation, institution or organization that provides child care services.

(1) "Approved Provider" means a provider who meets the requirements in R986-700-726.

(g) "Department" means Department of Workforce Services.

(h) "DWS" means Department of Workforce Services.

(i) "Employment plan" is a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(j) "FEP" means Family Employment Program.

(k) "FEPTP" means Family Employment Program Two Parent.

(l) "FFN" means Family, Friend and Neighbor provider.

(m) "Financial assistance" means payments, other than for SNAP, CC, or medical care, to an eligible individual or household which is intended to provide for the individual's or household's basic needs.

(n) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued.

(o) "Licensed-center provider" means a non-hourly, licensed child care center that is regulated through CCL.

(p) "IPV" means intentional program violation.

(q) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(r) "Minor child" means
a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(s) "OCC" means Department of Workforce Services, Office of Child Care.

(t) "ORS" means Office of Recovery Service, Utah State Department of Human Services.

(u) "Parent" means all natural, adoptive, and stepparents.

(v) "Recipient" means any individual receiving CC.

(w) Review or recertification. Clients who are found eligible for CC are given a date for review or recertification at which point continuing eligibility is determined.

(x) "SSA" means Social Security Administration.

(y) "SSI" means Supplemental Security Insurance.

(z) "TCA" means Transitional Cash Assistance.

(aa) "VA" means US Department of Veteran Affairs.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid [~~to a client~~]for the care of a client's[~~his or her~~] own child(ren) [~~when~~]during the time the client is working as a caregiver in the same[~~a~~] residential setting where care is being provided. CC will not[~~may~~] be approved where the client is working for an approved child care center and[~~, does not~~] regularly watches the client's[~~his or her~~] own children at the center or has[~~, and does not have~~] an ownership interest in the child care center. CC will not be paid [~~to a client~~]for the care of a client's[~~his or her~~] own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives CC[~~a subsidy~~] from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

~~**[R986-700-705. Eligible Providers and Provider Settings.**~~

~~(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:~~

~~(a) providers regulated through Department of Health Child Care Licensing (CCL):~~

~~(i) licensed homes;~~

~~(ii) licensed child care centers, except hourly centers; and~~

~~(iii) homes with a residential certificate.~~

~~(b) license exempt providers who are not required by law to be licensed and are either;~~

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider;

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, registration fees, late fees, field trips, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period

~~the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.~~

~~(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.~~

~~(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.~~

~~(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.~~

~~(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:~~

~~(a) submit and manage bank account information;~~

~~(b) read and agree to the terms and conditions contained in the Portal;~~

~~(c) view child care payment information;~~

~~(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;~~

~~(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:~~

~~(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;~~

~~(ii) a child is no longer in child care;~~

~~(iii) a child is not expected to be in child care the following month;~~

~~(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, registration fees, late fees, field trips, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;~~

~~(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of~~
~~whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and~~

~~(vi) a change in financial institution account information for direct deposit.~~

~~(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.~~

~~(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.~~

~~(11) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.~~

~~(12) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.~~]

R986-700-713. Amount of CC[~~Payment~~].

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey[~~. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet~~]; or

(2) the rate established by the provider for services and[~~, if required,~~] reported to the local Care About Child Care agency or the Department, provided that CC cannot pay more for services than is charged to the public for the same service; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes.[~~For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.~~]

(2) An away-from-home study hall or lab may be required as part of the class course.[~~A client who takes courses with this requirement must verify study hall or lab class attendance.~~] The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school.[~~For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.~~]

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.[~~Hours of need cannot exceed actual work hours.~~]

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-720. Provider General Provisions.

(1) The Department will only pay CC to a client who selects an:

(a) eligible provider,

(b) who is providing care in an eligible setting; and

(c) who has approved provider status.

(2) In addition to the requirements in this section, an eligible provider must meet all CCDF requirements.

(3) CC is only available for care provided in the state of Utah.

R986-700-721. Eligible Provider.

(1) A provider may only be eligible if the provider is:

(a) a provider regulated through CCL including a licensed:

(i) home provider;

(ii) child care center, unless the center is an hourly center; or

(iii) home with a residential certificate.

(b) a license exempt provider who is not required by law to be licensed and is either;

(i) a license exempt center provider as defined in R430-8-3. A license exempt center provider must have a current letter of exempt status from CCL identifying the provider as DWS Approved; or

(ii) a DWS FFN provider as approved by CCL.

(A) The requirements for FFN approval are provided in R986-700-724 and in DWS policy.

R986-700-722. Ineligible Provider.

(1) A provider is not eligible for any CC payment if the provider is:

(a) an undocumented alien; or

(b) under age 18.

(2) A provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court, is not eligible for any CC payment. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible.

(3) A provider disqualified under R986-700-718 is not eligible for any CC payment.

R986-700-723. Ineligible Provider Setting.

(1) A provider is not eligible to receive a CC payment for a particular client if the provider is:

(a) living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs as determined by the Department and who cannot be otherwise accommodated;

(b) a sibling of the child living in the home, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent of the child, even if living in another residence;

(d) providing care for the child in another state;

(e) a sponsor of a qualified alien client applying for CC; or

(f) living in the same home as a non-custodial parent and providing child care for a child of that parent.

R986-700-724. Family, Friend and Neighbor (FFN) provider.

(1) An FFN provider must comply with all CCDF and Department requirements and will not be approved for a CC payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) complete New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(2) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(3) FFN approval must be renewed annually.

(a) The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(4) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

R986-700-725. Appeals of CCL adverse action.

If a provider has any adverse action taken against it by CCL, the provider's appeal shall be made to CCL according to CCL's procedures.

R986-700-726. Approved Provider Status.

If an existing approved provider chooses not to comply with the following requirements, OCC will presume the provider has chosen not to receive payment for CC clients. To obtain and retain approved provider status, an eligible provider shall comply with the following:

(1) CCQS. A licensed-center provider must participate in the CCQS. A licensed-center provider is not required to receive a certified quality rating to be eligible for CC payments, but may not withdraw from participation as provided in R986-700-741.

(2) Care About Childcare. A provider, except an FFN provider, shall report its monthly, full-time child care rates to the local Care About Child Care agency.

(3) Verification. A provider must provide verification information to CCL and DWS to determine initial and continuing eligibility, which includes the following:

(a) submission of a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number (SSN);

(b) A provider who fails to provide verification information may lose approved provider status until verification information is provided.

(4) Provider Guide. A provider must read and agree to the terms and conditions contained in the Provider Guide at the time the provider is first approved for CC payment as well as any substantial changes to those terms and conditions.

(a) Licensed providers will be notified of any substantial changes to the terms and conditions of the Provider Guide.

(i) A licensed provider will be provided at least 30 days' notice of all substantial changes to the terms and conditions of the Provider Guide.

(ii) A licensed provider shall agree to the terms and conditions of the Provider Guide during the subsequent provider certification period, as required under R986-700-727(5).

(iii) If a provider fails to agree to any changes, CC payment will be withheld pursuant to the provisions of R986-700-729.

(b) A provider that has not previously received CC payments must comply with this provision before being approved and receiving payment.

(5) Certification. A provider must complete all ongoing certifications in the Provider Portal, including those certifications described in R986-700-727(5).

(a) If a provider fails to complete a required certification, CC payment may be withheld pursuant to the provisions of R986-700-729.

(b) If a provider fails to complete a required certification, the provider may be subject to an audit conducted by the Department.

(6) A provider who does not provide necessary information or cooperate with a Department investigation or audit as provided in R986-700-730 may be removed from approved provider status.

R986-700-727. Approved Provider Responsibilities.

(1) The provider shall assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for private payment to providers.

(2) Records. The provider shall keep accurate records of CC client time and attendance.

(a) Time and attendance records for all CC clients must be kept for at least three years.

(b) If a provider is not able to produce an accurate time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(c) "Accurate record" means a record that:

(i) was made at or near the time of the event,

(ii) was made by, or from information transmitted by, someone with knowledge, and

(iii) neither the source of information nor the method or circumstances of preparation of the record indicate a lack of trustworthiness.

(3) Provider Portal. The provider has an ongoing responsibility to access the Provider Portal located at the Department website to:

(a) submit ongoing, monthly certification,

(b) submit and manage bank account information, including to

(i) read and agree to the Financial Terms and Conditions contained in the Portal;

(c) view CC payment information, and

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so.

(i) The provider is liable for all changes made and information provided through the Provider Portal.

(4) Change reporting. Upon knowledge of the following changes, the provider shall report within ten calendar days, or by the 25th of the month, whichever is sooner:

(a) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(b) a child is no longer in child care;

(c) a child is not expected to be in child care the following month;

(d) that the provider received a greater CC payment amount than what was charged to the client for the month of service.

(i) An excess CC payment cannot be used to cover outstanding balances, copayments, registration fees, late fees, field trips, or future services.

(ii) The difference will either be deducted from the next month's CC payment or the funds must be returned to the Department;

(e) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(f) a change in financial institution account information for direct deposit.

(5) Certification.

(a) A licensed provider shall certify between the 25th of each month and the last day of the month, in a manner specified by the Department, the following:

(i) the provider has reviewed each child's attendance;

(ii) the provider has reported any reportable changes in each child's attendance, including future changes known or expected by the provider; and

(iii) the provider agrees to the terms and conditions specified in the most current Provider Guide.

(b) If a provider fails to certify by the last day of the month, CC payment may be withheld until certification is completed, pursuant to the provisions of R986-700-729.

R986-700-728. Appropriate use of CC.

(1) CC is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances.

(2) A provider must provide a minimum of eight hours of care during the CC month to be eligible for CC payment.

(a) A provider has the burden of proof to demonstrate the provider provided care to any CC client for which it receives CC payment.

(b) Pursuant to R986-700-727, if a provider is not able to produce a time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(3) Inappropriate use of a CC payment includes, but is not limited to:

(a) applying the CC payment to:

(i) copayments,

(ii) registration fees,

(iii) late fees,

(iv) field trips, or

(v) a client's out of pocket expenses; or

(b) carrying forward the CC payment for future months of service.

(4) If excess funds are issued for a month of service, the excess funds must be returned to the Department. The CC payment for the following month may be reduced to offset the over-issuance.

(5) A provider who receives a CC payment for services which were not provided is responsible for repayment of the resulting overpayment under Title 35A, Chapter 3, Part 6, and there may be a period of removal from approved provider status under R986-700-718, and potential criminal prosecution under Section 76, Chapter 8, Part 12.

(6) A provider who provides services for any part of a month and then terminates services with the client/child during the month, shall reimburse the Department for the days when care was not provided.

(a) If it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

(7) The Department will issue a 1099 annually to eligible providers who have received a CC payment during the year.

(8) A provider who applies CC funds inappropriately may be subject to an overpayment and possible child care disqualification.

R986-700-729. Withholding of CC Payment.

(1) CC payment will be withheld if a provider is found to have been overpaid and:

(a) fails to repay the overpayment, or

(b) fails to enter into a payment plan in accordance with Department policy, or

(c) is not current with payments in accordance with a payment plan.

(2) CC payment will be withheld if a provider fails to agree to the terms and conditions of the Provider Guide during a provider certification period.

(3) CC payments withheld pursuant to R986-700-729 will be released once the provider complies with the requirement.

(4) A provider shall not charge a client for a withheld CC payment. Although the client remains eligible, the provider will not receive CC payment until the provider complies with the participation requirements as provided by this rule.

R986-700-730. Audits and Investigations.

(1) The Department has the right to investigate a child care provider and audit their records.

(a) Audits and investigations may be performed by a person or entity under contract with the Department, from Department employees or other persons authorized by the Department to obtain information on behalf of the Department.

(b) A provider must cooperate with an investigation or audit to determine ongoing client eligibility or if client eligibility was correctly determined.

(2) Clients and providers must cooperate with any investigation or audit in a timely manner.

(a) A timely manner means ten business days for written documentation and two business days to return a phone call or email request.

(b) Cooperation means timely:

(i) providing information and verification of records,

(ii) returning telephone calls, and

(iii) responding to emails.

(3) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate an alleged overpayment without good cause.

(4) If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will be referred to the public assistance overpayments unit and may be found liable for an overpayment.

(a) A provider who obstructs an audit or investigation may be removed from approved provider status.

(5) Good cause. Good cause is limited to circumstances where the client or provider can show that the reason for the failure to cooperate, to timely respond to requests, or to provide or keep records was due to circumstances beyond the client or provider's control or were compelling and reasonable.

(6) Providing incomplete or incorrect information will be treated as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to eligibility.

(7) A provider has the burden of proof to demonstrate the provider actually provided care to any CC client for which it receives CC payment.

R986-700-735. Appeals.

(1) A client appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

(2) A provider may appeal an overpayment as provided in rule R986-100-123 et seq. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

R986-700-741. CCQS Rating and Status.

(1) Each licensed center program shall receive a CCQS rating or status, unless the program withdraws from participation following the process established by OCC policy.

(a) A licensed center program who chooses not to apply for a certified quality rating will receive a default rating.

(b) A DWS-Eligible child care program is required to participate in CCQS to remain an eligible provider. Participation means maintaining at least a default rating. An eligible provider is not required to submit an application for a certified quality rating.

(c) All CCQS ratings or statuses shall be made public on the Care About Childcare website.

(d) A DWS-eligible child care program which withdraws from participation in CCQS will become ineligible to receive CC subsidy and CCQS[~~OCC~~] grants or funding.

(2) A program may apply for a certified quality rating in accordance with OCC policy through the Care About Childcare website.

(a) A rating shall be awarded or a status shall be assigned no later than 180 days after the application was submitted.

(b) Certified quality ratings will be published publicly on the first day of the month of the certified rating period.

(3) A certified quality rating shall remain in place during the 12-month certified quality rating period unless a program:

(a) loses its license in good standing and goes on conditional license; or

(b) is disqualified from accepting funds from CCDF.

(4) The 12-month certified quality rating period may be modified when a program is receiving CCQS technical assistance and support from OCC, in accordance with OCC policy.

(5) Recertification. Upon expiration of the certified quality rating period, a program must recertify in order to maintain a certified quality rating.

(a) A program must follow the recertification procedures established by OCC policy.

(b) A program failing to recertify in a timely manner may receive one of the following ratings or statuses until a certified quality rating is awarded:

(i) a default Foundation of Quality rating for a program that is DWS-Eligible;

(ii) not participating status for a program that is not DWS-Eligible; or

(iii) denied participation status for a program operating on a conditional license at the time of recertification.

R986-700-742. Enhanced Subsidy Grant (ESG).

(1) To receive an Enhanced Subsidy Grant (ESG) a program must:

(a) receive a certified quality rating of:

(i) High Quality; or

(ii) High Quality Plus;

(b) serve children for whom child care was paid for with CC subsidy payments during the 12-month period used to calculate the ESG;

(c) maintain a license in good standing with CCL during the 12-month certification period;

(d) maintain status as a DWS-Eligible child care program during the 12-month certification period;

(e) agree to the comply with the requirements outlined in the certified quality rating award notice;

(f) agree to the amount of the ESG stated on the certified quality rating award notice;

(g) agree to receive the ESG through the process established by OCC policy;[~~and~~]

(h) not be removed from approved provider status due to an adjudicated Intentional Program Violation (IPV), as defined in R986-100-117 and R986-700-718,

(i[~~h~~]) not have a pending administrative review on the awarded certified quality rating, and[~~.~~]

(j) not have a Notice of Agency Action for a suspected Intentional Program Violation (IPV) issued against the provider, as defined in R986-100-117.

(2[~~i~~]) Upon final disposition of a pending administrative review, an ESG may be issued retroactively where all other ESG requirements are met and the program has not been found to have committed an IPV pursuant to R986-100-117 and R986-700-718.

(3[~~2~~]) An ESG for a program that has an outstanding adjudicated overpayment or other debt owing to OCC shall be issued as follows:

(a) if the overpayment amount is less than the monthly ESG amount, the ESG shall be reduced by the amount of outstanding overpayment due; or

(b) if the overpayment amount is greater than the monthly ESG, a monthly ESG shall continue to be reduced until the overpayment is fully repaid.

(4[~~3~~]) An overpayment where there is not a suspected IPV and for which there is a pending administrative review or appeal shall not impact the ESG until final disposition of the action is issued.

(5[4]) The monthly ESG will be calculated in accordance with OCC policy.

(6) A program found to have been overpaid CC subsidy due to an IPV on the part of the program while receiving ESG shall, in addition to repaying the overpaid CC subsidy, repay the ESG received during the time period of the IPV.

R986-700-770. Provider Grant Eligibility.

To be eligible for Child Care Development Fund (CCDF)-funded OCC grants from the Department, a provider must:

(1) meet all CCDF requirements;

(2) participate in CCQS, if applicable;

(3)(a) have no outstanding overpayment pursuant to R986-700-715, or

(b) have an established repayment plan with the Department and be current in repayments;

(4) hold a license in good standing from CCL;

(5) not have a Notice of Agency Action for a suspected Intentional Program Violation (IPV) issued against the provider, as defined in R986-100-117; and

(6) not be removed from approved provider status due to an adjudicated Intentional Program Violation (IPV), as defined in R986-100-117 and R986-700-718.

KEY: child care, grant programs
Date of Enactment or Last Substantive Amendment: [~~October 1, 2019~~]2020
Notice of Continuation: September 3, 2015
Authorizing, and Implemented or Interpreted Law: 35A-3-203(12); 35A-3-310; 53F-5-210

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 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-400**	**Filing No. 52324**

Agency Information

1. Agency:	Utah Department of Health, Administration	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Utah Medical Cannabis Act Rule

3. Effective Date:
11/15/2019
4. Purpose of the new rule or reason for the change:
The Utah Medical Cannabis Act, Title 26, Chapter 61a, requires that the Utah Department of Health establish rules related to medical cannabis cardholders, medical cannabis pharmacies, medical cannabis home delivery services, qualified medical providers, pharmacy medical providers, medical cannabis pharmacy agents, medical cannabis couriers, medical cannabis courier agents, and other rules.
5. Summary of the new rule or change:
This rule filing defines terms used in Title 26, Chapter 61a, Utah Medical Cannabis Act, and Rules R380-400 through R380-411.
6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Applicants have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review this proposed rule and incorporate essential information about this rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Utah Department of Health in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This rule filing only defines terms used in Title 26, Chapter 61a, Utah Medical Cannabis Act and Rules R380-400 through R380-411 and the definitions have no anticipated cost or savings impact on the state budget.

B) Local governments:

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.

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

Defining child care facility or preschool as only those approved by the Department to have a capacity of 300 or more children in Subsection R380-400-2(4) decreases the number applicable facilities from 375 to 3. This change will likely have savings impact on medical cannabis pharmacies because it reduces restrictions on where they can locate and increases the number of available real estate options. At this time, the extent of savings impact on medical cannabis pharmacies prompted by this rule is unknown.

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**)**:**

This rule only defines terms used in Title 26, Chapter 61a, Utah Medical Cannabis Act, and Rules R380-400 through R380-411 and the definitions have no anticipated cost or savings impact on persons other than small businesses, businesses, or local government entities.

8. Compliance costs for affected persons:

This rule only defines terms used in Title 26, Chapter 61a, Utah Medical Cannabis Act, and Rules R380-400 through R380-411 and the definitions have no anticipated cost or savings impact on affected persons.

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

This rule sets out the authority and definitions used throughout the rules administering the medical cannabis program. It is necessary to use the emergency rulemaking process in order to use these rules in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act.

It has been determined that this rule will not have a fiscal impact on businesses.

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

Joseph K. Miner, MD, Executive Director

Citation Information

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

Title 26, Chapter 61a		

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.

R380-400. Utah Medical Cannabis Act Rule.

R380-400-1. Authority and Purpose.

Pursuant to Section 26-1-5(1), this rule defines terms used in Title 26, Chapter 61a, Utah Medical Cannabis Act and Sections R380-400 through R380-411.

R380-400-2. Definitions.

(1) The definitions in Section 26-61a-102 apply in this rule. In addition the following definitions apply in this rule:

(2) "Card" means any type of medical cannabis card or registration card, whichever is applicable, authorized under Title 26, Chapter 61a.

(3) "Cardholder area" means the area of a medical cannabis pharmacy where products are purchased that is restricted to medical cannabis cardholders, medical cannabis pharmacy employees, or other individuals authorized by the medical cannabis pharmacy's PIC.

(4) "Child-care facility or preschool" means a child-care facility approved by the Department to have a capacity of 300 or more children.

(5) "Courier agent" means a medical cannabis courier agent.

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

(7) "Direct supervision" means that a PMP is physically present at a medical cannabis pharmacy facility and immediately available for in person face-to-face communication with the pharmacy agent.

(8) "EVS" means the electronic verification system established in Section 26-61-103.

(9) "ICS" means the inventory control system established in Section 4-41a-103.

(10) "Limited access area" means an indoor area of a medical cannabis pharmacy facility where medical cannabis and medical cannabis devices shall be stored, labeled, and disposed of that is separated from the cardholder and public areas of the medical cannabis pharmacy by a physical barrier with suitable locks and an electronic barrier to detect entry doors.

(11) "Pharmacy agent" means a medical cannabis pharmacy agent.

(12) "PIC" means a pharmacist in charge who oversees the operation and generally supervises a medical cannabis pharmacy.

(13) "PMP" means a medical cannabis pharmacy medical provider.

(14) "Public area" means an area of the medical cannabis pharmacy where the public waits for cardholders and cardholders wait for authorization to enter the cardholder area. Non-cardholders and non-employees may be present in this area of the medical cannabis pharmacy.

(15) "QMP" means a qualified medical provider.

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

(17) "Utah resident" means an individual who has established a domicile in Utah.

KEY: medical cannabis, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 26-1-5(1); 26-61a; 63G-3

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-401**	**Filing No. 52326**

Agency Information

1. Agency:	Utah Department of Health, Administration
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state, zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 141000
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov

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

General Information

2. Rule or section catchline:

Electronic Verification System and Inventory Control System

3. Effective Date:

11/15/2019

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

The Utah Medical Cannabis Act, Title 26, Chapter 61a, requires the Utah Department of Health to establish rules related to medical cannabis cardholders, medical cannabis pharmacies, medical cannabis home delivery services, qualified medical providers, pharmacy medical providers, medical cannabis pharmacy agents, medical cannabis courier, medical cannabis courier agents, and other rules.

5. Summary of the new rule or change:

This rule filing establishes electronic verification system and inventory control system access limitations and standards and confidentiality requirements.

6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review this proposed rule and incorporate essential information about this rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Utah Department of Health in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule only establishes electronic verification system and inventory control system access limitations and standards and confidentiality requirements, and it has no anticipated cost or savings impact on the state budget.
B) Local governments:
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.
C) Small businesses ("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 requirements for small businesses.
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**)**:**
This proposed rule only establishes electronic verification system and inventory control system access limitations and standards and confidentiality requirements, and it has no anticipated cost or savings impact on persons other than small businesses, businesses, or local government entities.
8. Compliance costs for affected persons:
This rule only establishes electronic verification system and inventory control system access limitations and standards and confidentiality requirements, and it has no anticipated cost or savings impact on affected persons.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This rule filing establishes electronic verification system and inventory control system access limitations and standards and confidentiality requirements. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act. It has been determined that this rule will not have a fiscal impact on businesses.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 26-61a-103(4)	Subsection 26-1-5(1)	Title 26, Chapter 61a

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.

R380-401. Electronic Verification System and Inventory Control System.

R380-401-1. Authority and Purpose.

Pursuant to Subsections 26-1-5(1) and 26-61a-103(4), this rule establishes EVS and ICS access limitations and standards and confidentiality requirements.

R380-401-2. Definitions.

For purposes of this section, the following definitions apply:

(1) "Law enforcement personnel" means law enforcement personnel who have access to UCIJIS.

(2) "Safeguard" means to maintain the confidentiality of the information accessed and not use, release, publish, disclose or otherwise make available to any other person not authorized to access the information, for any other purpose than as specifically authorized or permitted by applicable law.

(3) "State agency employee" means an employee of the Utah Department of Health, Utah Department of Agriculture and Food, Utah Department of Technology Services and the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) "UCIJIS" means the Utah Criminal Justice Information System.

R380-401-3. Access Limitations and Standards.

(1) A person requests access to the data in the EVS and ICS by creating an account to begin an EVS or ICS application process.

(2) The following individuals may access information in the EVS about themselves or other cardholders for whom they are a guardian or caregiver to the extent allowed in Title 26, Chapter 61a, Utah Medical Cannabis Act or Title 4, Chapter 41a:

(a) medical cannabis patient cardholder;

(b) medical cannabis guardian cardholder; and

(c) medical cannabis caregiver cardholder.

(3) The following individuals may be granted EVS access to the extent allowed in Title 26, Chapter 61a, Utah Medical Cannabis Act or Title 4, Chapter 41a, Cannabis Productions Establishments, and this rule:
(a) QMP;
(b) PMP;
(c) pharmacy agent;
(d) courier agent;
(e) cannabis production establishment agent;
(f) state agency employee; and
(g) law enforcement personnel.
(4) A medical cannabis cardholder may be granted EVS access for purposes specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, and this rule, including:
(a) to submit card applications, both initial and renewal;
(b) to submit online payment of fees;
(c) to submit petitions to the Compassionate Use Board;
(d) to gain access to home delivery medical cannabis pharmacy websites to order products; and
(e) to complete surveys reporting patient outcomes and interactions with medical cannabis.
(5) A QMP may be granted EVS access and ICS access for purposes specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, and this rule, including:
(a) to complete QMP registration, both initial and renewal;
(b) to complete online fee payment;
(c) to submit, review, edit, or change a patient's medical information;
(d) to submit recommendations on behalf of a patient to receive a specific dosage type and dosage amount of medical cannabis; and
(e) to complete surveys reporting patient outcomes and interactions with medical cannabis.
(6) A PMP may be granted EVS access and ICS access for purposes specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, and this rule, including:
(a) to complete PMP registration, both initial and renewal;
(b) to complete online fee payment;
(c) to review and verify dosing parameters in patient's medical cannabis recommendation submitted by a QMP;
(d) to enter dosing parameters in a medical cannabis recommendation if it does not contain dosing parameters;
(e) to complete surveys reporting patient outcomes and interactions with medical cannabis; and
(f) to update employment status of PMPs and pharmacy agents.
(7) An authorized state agency employee may be granted EVS access or ICS access for purposes specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, and Title 4, Chapter 41a, Cannabis Productions Establishments, and this rule, including:
(a) to process applications submitted by license and card applicants, both initial and renewal,
(b) to review inventory of medical cannabis pharmacies and cannabis production establishments;
(c) to manage petitions submitted to the Compassionate Use Board; and
(d) to run epidemiological reports and statistics from data stored in the EVS.
(8) A cannabis production establishment agent, pharmacy agent, and a courier agent may be granted EVS access and ICS access for purposes specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, and this rule, including
(a) for the purpose of completing agent registration, both initial and renewal
(b) to complete online payments of fees
(c) to update employment status.
(9) State and local law enforcement personnel may be granted EVS access through UCIJIS for the purpose of determining if an individual is in compliance with the state medical cannabis law.

R380-401-4. Applications for Access.
(1) A person listed in Subsection R380-401-3 requests access to the data in the EVS and ICS by creating an account to begin an EVS or ICS application process.
(2) An applicant's EVS access and ICS access is limited to the information submitted by the applicant until the application is approved.
(3) Once an application is approved, the level of EVS access and ICS access granted shall depend on the type of card or license issued.
(a) Requests for access shall be completed within the EVS application interface.
(b) Appropriate access shall be automatically requested with all cardholder and license applications when applicable.
(c) A separate request for access may be completed when the Department determines that a card or license application is not required.
(d) All required fields of a card or license application shall be completed by an applicant.
(e) A request for access will not be considered submitted unless all required information is provided.

R380-401-5. Confidentiality Requirements.
(1) A person authorized to access information in the EVS and the ICS shall access only the minimum amount of information necessary to perform authorized functions specified in Title 26, Chapter 61a, Utah Medical Cannabis Act, Title 4, Chapter 41a, Cannabis Productions Establishments, R68-27 and this rule.
(2) A person authorized to access information in the EVS and the ICS shall safeguard all information stored in those systems, including specific information about medical cannabis cardholders.
(3) The Executive Director of the Department or his or her designee shall determine if an emergency situation warrants immediate release of medical cannabis cardholder information to another state agency. The information may be released only to another governmental agency under the Memorandum of Understanding or data sharing agreement between the Department and the requesting agency.
(4) A person authorized to access the EVS or ICS who fails to observe the confidentiality requirements of this rule may lose access the EVS and ICS and may be subject to the penalties provided in Section 26-61a-103.

KEY: medical cannabis, medical cannabis pharmacy, inventory control system, electronic verification system
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 4-41a; 26-1-5(1); 26-61a-103(4); 63G-3

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-402**	**Filing No. 52328**

Agency Information

1. Agency:	Utah Department of Health, Administration
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state, zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 141000
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov

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

General Information

2. Rule or section catchline:

Medical Cannabis Cards

3. Effective Date:

11/15/2019

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

The Utah Medical Cannabis Act, Section 26-61a-201, requires that the Utah Department of Health (Department) establish rules related to medical cannabis cardholders.

5. Summary of the new rule or change:

This proposed rule establishes medical cannabis card application procedures and renewal application procedures.

6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Utah Department of Health in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule will result in cost savings impact on the state budget because it allows the Department to send correspondence via email rather than regular mail unless a cardholder requests that they receive correspondence via regular mail. The Department estimates that by making this rule, it will incur a cost savings of approximately $400 a year. Cost savings was calculated by multiplying 1,000 by 0.40 (1,000 letters of correspondence at $0.40 per mailing).

B) Local governments:

This proposed rule will not result in a fiscal impact to the local governments' because this rule does not establish requirements for enforcement by local agencies.

C) Small businesses ("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 requirements for small businesses.

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

This proposed rule will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities because this rule does not establish requirements for these persons.

8. Compliance costs for affected persons:

This proposed rule will not result in a fiscal impact to affected persons because this rule does not establish requirements for these persons.

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

This proposed rule establishes medical cannabis card application procedures and renewal application procedures. It is necessary to use the emergency rulemaking process in order to use these rules in the

current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act. It has been determined that this rule will not have a fiscal impact on businesses.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 26-61a-201(8)	Subsection 26-1-5(1)	Subsection 26-61a-201(9)
Title 26, Chapter 61a		

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-402. Medical Cannabis Cards.
R380-402-1. Medical Cannabis Cards - Authority and Purpose.

Pursuant to Subsections 26-1-5(1), 26-61a-201(8) and 26-61a-201(9), this rule establishes medical cannabis card application procedures and renewal application procedures.

R380-402-2. Medical Cannabis Cards -- Application Procedures.

(1) The application procedures established in this section govern all applications for initial issuance of a medical cannabis card under Title 26, Chapter 61a.

(2) Pursuant to Section 26-61a-201, upon receipt of a medical cannabis card, the Department shall provide the cardholder information regarding the following:

(a) risks associated with medical cannabis treatment;

(b) the fact that a condition's listing as a qualifying condition does not suggest that medical cannabis treatment is an effective treatment or cure for that condition; and

(c) other relevant warnings and safety information that the Department determines.

(3) The information described in Subsection (2) shall be electronically provided to each medical cannabis cardholder and shall be accessible to the public on the Department's website.

(4) Each card applicant shall apply upon forms available from the Department.

(5) The Department may issue a card to an applicant only if the applicant meets the card requirements established under Title 26, Chapter 61a and by Department rule.

(6) The Department shall provide a written notice of denial to an applicant who submits a complete application if the Department determines that the applicant does not meet the card requirements.

(7) The Department shall provide a written notice of incomplete application that the application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(8) Written notices of denial and incomplete application shall be sent to the applicant's last email address shown in the Department's EVS database unless the cardholder has requested to be notified by regular mail.

(9) Each applicant shall maintain a current email and mailing address with the Department. Notice to the last email address on file with the Department constitutes legal notice unless the cardholder has requested to be notified by regular mail.

R380-402-3. Medical Cannabis Cards - Renewal Application Procedures.

(1) Renewal application procedures established in this section shall govern applications to renew a medical cannabis card under Title 26, Chapter 61a.

(2) Each card applicant shall apply upon renewal application forms available from the Department.

(3) The Department shall issue a card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the card requirements.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete renewal application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to an applicant a written notice of incomplete that the renewal application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) The Department shall send a renewal notice to each cardholder at least 7 days prior to the expiration date shown on the cardholder's card. The notice shall include instructions for the cardholder to renew the card via the Department's website.

(7) Renewal notices shall be sent to the cardholder's last email shown in the Department's EVS database unless the cardholder has requested to be notified by regular mail.

(8) Each cardholder is required to maintain a current email address with the Department. Emailing to the last email address furnished to the Department constitutes legal notice unless the cardholder has requested to be notified by regular mail.

(9) Renewal notices shall advise each cardholder that a card automatically expires on the expiration date and is no longer valid.

(10) If an individual's medical cannabis card expires, the individual may submit a card renewal application at any time regardless of the length of time passed since the expiration of the card.

KEY: medical cannabis card, medical cannabis, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019

Authorizing, and Implemented or Interpreted Law: 63G-3; 26-61a; 26-1-5(1); 26-61a-201(8); 26-61a-201(9)

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-404**	**Filing No. 52337**

Agency Information

1. Agency:	Utah Department of Health, Administration	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Dosing Parameters

3. Effective Date:

11/15/2019

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

The Utah Medical Cannabis Act, Title 26, Chapter 61a, requires the Utah Department of Health (Department) to establish rules related to medical cannabis cardholders, medical cannabis pharmacies, qualified medical providers, and pharmacy medical providers.

5. Summary of the new rule or change:

This proposed rule establishes general standards for dosage parameters in a medical cannabis recommendation.

6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule will not result in a fiscal impact to the state budget because this rule does not establish new requirements for the Department.

B) Local governments:

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.

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

This proposed rule will not result in a fiscal impact to the small businesses because this rule does not establish new requirements for small businesses.

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

This proposed rule will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities because this rule does not establish new requirements for these persons.

8. Compliance costs for affected persons:

This proposed rule will not result in a fiscal impact to affected persons because this rule does not establish new requirements for these persons.

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

This proposed rule establishes general standards for dosage parameters in a medical cannabis recommendation. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the

Utah Medical Cannabis Act. It has been determined that this rule will not have a fiscal impact on businesses.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 26, Chapter 61a	Title 63G, Chapter 3	Subsection 26-1-5(1)

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin.*			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-404. Dosing Parameters.
R380-404-1. Authority and Purpose.

Pursuant to Sections 26-1-5(1), this rule establishes standards for dosing parameters in a medical cannabis recommendation.

R380-404-2. Dosing Parameters in Medical Cannabis Recommendation.

(1) A QMP can change the dosage form or dosing parameters in the EVS for their patient. A PMP shall not change the dosage form or dosing parameters entered in the EVS by a patient's QMP without approval from the patient's QMP.

(2) A QMP may change the dosage form or dosing parameters specified by a patient's former QMP so long as the cardholder has identified the current QMP as the QMP of record and removed the former QMP from the EVS.

(3) If a QMP has not specified the dosage form or dosing parameters for a patient, a PMP may specify the dosage form and dosing parameters. If a QMP does not specify a dosing form and dosing parameters for a patient, or specifies a dosage form and some or no dosing parameters for a patient, a PMP can specify the remaining dosing parameters.

(4) A state central patient portal medical provider may specify dosage form and dosing parameters for a patient recommendation in the EVS only upon written or verbal consent from a medical cannabis cardholder and if either the dosage form or dosing parameters are not specified in the EVS by the patient's QMP. If a QMP specifies certain dosing parameters for a patient, a state central patient portal medical provider can specify the remaining dosing parameters with written or verbal consent of the medical cannabis cardholder.

KEY: medical cannabis, medical cannabis dosing parameters, medical cannabis pharmacy
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 63G-3; 26-61a; 26-1-5(1)

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-405**	**Filing No. 52339**

Agency Information

1. Agency:	Utah Department of Health, Administration	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Pharmacy Medical Providers
3. Effective Date:
11/15/2019
4. Purpose of the new rule or reason for the change:
Subsection 26-61a-403(3) requires the Utah Department of Health (Department) to establish rules related to qualified medical providers.
5. Summary of the new rule or change:
This rule filing establishes definitions, pharmacy medical provider (PMP) application procedures, and PMP continuing education requirements.
6. Regular rulemaking would:
cause an imminent peril to the public health, safety, or welfare;

	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Under Section R380-405-5, minimal savings impact on the state budget comes as a result of the Department adopting a rule that allows businesses to create continuing education coursework to be approved by the Department rather than having the Department contract with a vendor to create this coursework. The Department is unable to estimate how much it would cost to contract with a single vendor to create it but work involved would include working with the Division of Purchasing on posting an RFP or coordinating with an existing state vendor.

B) Local governments:

This proposed rule will not result in a fiscal impact to the local governments because this rule does not establish requirements for enforcement by local agencies.

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

Section R380-405-5 allows businesses to create continuing education coursework to be approved by the Department rather than having the Department contract with a vendor to create this coursework. This enables businesses to provide approved coursework at a cost to applicants seeking registration as a pharmacy medical provider. Businesses are expected to charge a course registration fee of $150 to $300. The number of small businesses impacted by this rule is unknown because the Department has no way of knowing how many small businesses will decide to provide these courses.

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**)**:**

Entities or individuals affected by this rule filing include some physicians, and pharmacists who intend to be registered pharmacy medical providers (PMPs). Section R380-405-5 establishes the continuing education requirement for PMPs and the estimated cost impact of the coursework is $150 to $300 during each two year renewal cycle. The Department estimates that approximately 21 medical professionals will become registered PMPs in FY 2020 and 200 in FY 2021.

8. Compliance costs for affected persons:

Entities or individuals affected by this rule filing include some physicians, and pharmacists who intend to be registered pharmacy medical providers (PMPs). Section R380-405-5 establishes the continuing education requirement for PMPs and the estimated cost impact of the coursework is $150 to $300 during each two year renewal cycle. The Department estimates that approximately 21 medical professionals will become registered PMPs in FY 2020 and 200 in FY 2021.

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

This rule filing establishes definitions, PMP application procedures, and PMP continuing education requirements. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act.

Entities or individuals affected by this rule filing include some physicians, and pharmacists who intend to be registered PMPs. Section R380-405-5 establishes the continuing education requirement for PMPs and the estimated cost impact of the coursework is $150 to $300 during each two year renewal cycle. The Department estimates that approximately 21 medical professionals will become registered PMPs in FY 2020 and 200 in FY 2021.

It has been determined that this rule will not have a fiscal impact on businesses.

This rule will fiscally impact any business that provides or pays for the coursework and applications for medical professionals to become qualified medical providers.

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

Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 26, Chapter 61a	Subsection 26-61a-403(3)	Subsection 26-1-5(1)

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/15/2019

R380. Health, Administration.
R380-405. Pharmacy Medical Providers.
R380-405-1. Authority and Purpose.

Pursuant to Subsections 26-1-5(1) and 26-61a-403(3)(b), this rule establishes PMP application procedures and PMP continuing education requirements.

R380-405-2. Definitions.

As used in this section:

(1) "Fundamentals of medical cannabis coursework" means a course or combination of courses with content that addresses the following subjects:

(a) endocannabinoid system and phytocannabiniods;

(b) general guidance and recommendations for medical cannabis; and

(c) history of cannabis, dosing forms, considerations, drug interactions, adverse reactions, contraindications (breastfeeding and pregnancy), and toxicology.

(2) "General medical cannabis coursework" means a course or combination of courses with content that addresses medical cannabis which may include medical cannabis law or fundamentals of medical cannabis coursework.

(3) "Medical cannabis law coursework" means a course or combination of courses with content that addresses the Utah Medical Cannabis Act and other state and federal laws relating to medical cannabis that includes, at a minimum, a review of the following:

(a) qualifying health conditions for which a patient may lawfully use medical cannabis for medicinal purposes in Utah;

(b) forms of medical cannabis that qualifying patients are allowed and prohibited under Utah law;

(c) limits of the quantities of unprocessed cannabis and cannabis products in medicinal form that may be dispensed in Utah;

(d) requirements to initially register and renew registration as a PMP;

(e) limits to the number of active medical cannabis recommendations that a QMP can make at any given time;

(f) description of what a QMP must document in patient's record before recommending medical cannabis;

(g) information required from a QMP when writing a medical cannabis recommendation and the option to make a recommendation without specifying a dosage form and dosing parameters;

(h) a PMP's role in determining the appropriate medical cannabis dosage form and dosage parameters when a QMP chooses to recommend without specifying a dosage form and dosing parameters;

(i) limits on advertising by a QMP;

(j) types of medical cannabis cards;

(k) regulations controlling the distribution of product by medical cannabis pharmacies;

(l) partial fill orders;

(m) the role of the compassionate use board;

(n) the role of cannabis cultivation facilities, cannabis processing facilities, and independent cannabis testing laboratories that operate within Utah's medical cannabis system;

(o) the conditions of legal possession of medical cannabis under Utah law before and after January 1, 2021;

(p) legal status of medical and recreational marijuana in states surrounding Utah and under federal law;

(q) authority to change dosage parameters in a medical cannabis recommendation as outlined in R380-404;

(r) home delivery of medical cannabis; and

(s) purpose of the state central patient portal.

R380-405-3. Pharmacy Medical Providers - Application Procedures.

(1) The application procedures established in this section govern all applications for initial issuance of a PMP registration card under Title 26, Chapter 61a and by Department rule.

(2) Each card applicant shall apply upon forms available in the EVS from the Department.

(3) The Department may issue a PMP card only if the applicant meets the card requirements established under Title 26, Chapter 61 and by Department rule.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to the applicant a written notice of incomplete application that the application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) Written notices of denial or incomplete application shall be sent to the applicant's last email address shown in the Department's EVS database.

(7) Each applicant shall maintain a current email address with the Department. Notice sent to the last email address on file with the Department constitutes legal notice.

R380-405-4. Pharmacy Medical Providers - Renewal Application Procedures.

(1) Renewal application procedures established in this rule shall govern applications for a PMP registration card.

(2) Each PMP card applicant shall apply upon renewal application forms available from the Department.

(3) The Department may issue a card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the card requirements.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete renewal application

if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to the applicant a written notice of incomplete application that the application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) The Department shall send a renewal notice to each cardholder at least 60 days prior to the expiration date shown on the PMP cardholder's card. The notice shall include directions for the to renew the card in the EVS via the Department's website.

(7) Renewal notices shall be sent to the cardholder's last email shown in the Department's EVS database.

(8) Each cardholder shall maintain a current email address and mailing address with the Department. Notice sent to the current email address on file with the Department constitutes legal notice unless the applicant has requested to be notified by regular mail.

(9) Renewal notices shall advise each cardholder that a card automatically expires on the expiration date and is no longer valid if it is not renewed prior to the expiration.

(10) If an individual's PMP registration card expires, the individual may submit a card renewal application at any time regardless of the length of time passed since the expiration of the card.

R380-405-5. Pharmacy Medical Providers - Continuing Education Requirement.

(1) Pursuant to Subsection Utah Code 26-61a-403, applicants for registration as a PMP shall verify completion of four hours of continuing education. Once registered as a PMP, an individual shall complete an additional four hours of continuing education every two years as a requirement for renewal.

(2) To meet the continuing education requirement, all coursework shall include the following:

(a) approval by the Utah Department of Health;

(b) be provided by organizations accredited through the Accreditation Council for Continuing Medical Education (ACCME), Accreditation Council for Pharmacy Education (ACPE), or the American Association of Nurse Practitioners (AANP);

(c) a completion of a test with a passing score, as determined by the course provider, to verify comprehension of course content; and

(d) a certificate of completion.

(3) Initial registration as a PMP requires at least four hours of continuing education, which shall include at a minimum:

(a) medical cannabis law coursework; and

(b) fundamentals of medical cannabis coursework.

(4) A PMP shall renew registration every two years after completing at least four hours of continuing education in general medical cannabis coursework to be completed within two years prior to the date that the PMP submits the renewal application.

(5) The continuing education report shall be submitted with an individual's application for registration as a PMP and shall include a certificate of completion for coursework completed after issuance of the most recent registration. Applications that do not include the continuing education report will be considered incomplete and the Department will not process an application until the report is complete.

KEY: medial cannabis, pharmacy medical providers, marijuana

Date of Enactment or Last Substantive Amendment: November 15, 2019

Authorizing, and Implemented or Interpreted Law: 63G-3; 26-1-5(1); 26-61a-403(3)(b); 26-61a

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-406**	**Filing No. 52345**

Agency Information

1. Agency:	Utah Department of Health, Administration
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state, zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 141000
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov

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

General Information

2. Rule or section catchline:

Medical Cannabis Pharmacy

3. Effective Date:

11/15/2019

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

Sections 26-61a-501, 26-61a-503, and 26-61a-605 of the Utah Medical Cannabis Act require the Utah Department of Health (Department) to establish rules related to medical cannabis pharmacies.

5. Summary of the new rule or change:

This proposed rule establishes definitions, general medical cannabis pharmacy operating standards, partial fill standards, medical cannabis pharmacy operating plan requirements, cannabis product transportation standards, cannabis product waste and disposal standards, cannabis product recall standards, duties and requirements of a pharmacist-in-charge, security standards, supervision standards, inventory standards, cannabis product packaging standards, and standards related to closing a medical cannabis pharmacy.

6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;

	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule will not result in a fiscal impact to the state budget because it does not establish requirements for the Department.

B) Local governments:

This proposed rule will not result in a fiscal impact to the local governments because this rule does not establish requirements for enforcement by local agencies.

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

Section R380-406-3 prohibits a medical cannabis pharmacy from selling or transferring their license. This may have cost impact on businesses that have a medical cannabis pharmacy license and want the option of selling or transferring the license to another business for a price. Rather than selling or transferring the license, the business must abandon it and the Department would post an RFP through the Division of Purchasing, accept applications, and award the license to the top applicant. The market price for a medical cannabis pharmacy license in Utah would depend on a lot of factors, such as market size and the location of a facility being purchased. The Department does not have enough information to estimate market price.

Section R380-406-3 establishes general operating standards for medical cannabis pharmacies. One standard is that a medical cannabis pharmacy must protect at all times confidential cardholder data and information stored in the EVS. This means that each medical cannabis pharmacy must purchase the state of Utah's designated EVS which is MicroPact's entellitrak software programmed to Utah's specifications. The cost of the software depends on the number of users. It is anticipated that most medical cannabis pharmacies will have five or less concurrent users and therefore purchase the entellitrak Professional Edition which has a one-time perpetual license fee of $76,302 and an annual support and upgrade subscription fee of $15,260. The $15,260 annual support and subscription fee will not increase more than 2% annually unless a compelling business need arises, and with consultation and approval of the Department.

Section R380-406-7 establishes security standards for medical cannabis pharmacies. According to the industry, estimated costs of security equipment (i.e. cameras and monitors, access control, panic button(s), burglary system) range from $34,000 to $60,000 for initial purchase and installation. Annual maintenance of this security equipment ranges between $1,000 and $1,500 per year. Estimated costs of infrastructure (i.e. installing steel doors, adding walls, bullet proof glass, building vaults) range between $80,000 and $100,000 for initial installation. Maintenance costs of these items will be low.

Section R380-406-8 establishes inventory standards for medical cannabis pharmacies. One standard is that pharmacies use the state's designated inventory control system (ICS) to establish a record of each transaction. This means that each medical cannabis pharmacy must purchase the state of Utah's designated ICS which is MJ Freeway's Leaf Data Systems software programmed to Utah's specifications. The cost of the ICS is a $599 per month subscription fee.

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***)**:**

This proposed rule will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities because it does not establish requirements for these persons.

8. 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.

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

This proposed rule establishes definitions, general medical cannabis pharmacy operating standards, partial fill standards, medical cannabis pharmacy operating plan requirements, cannabis product transportation standards, cannabis product waste and disposal standards, cannabis product recall standards, duties and requirements of a pharmacist-in-charge, security standards, supervision standards, inventory standards,

cannabis product packaging standards, and standards related to closing a medical cannabis pharmacy. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act.

The requirements in this rule will fiscally impact a licensed medical cannabis pharmacies option of selling or transferring the license to another business for a price. Rather than selling or transferring the license, the business must abandon it and the Department would post an RFP through the Division of Purchasing, accept applications, and award the license to the top applicant. The market price for a medical cannabis pharmacy license in Utah would depend on a lot of factors, such as market size and the location of a facility being purchased. The Department does not have enough information to estimate market price. Also, each medical cannabis pharmacy must purchase the state of Utah's designated EVS which is MicroPact's entellitrak software programmed to Utah's specifications. The cost of the software depends on the number of users. It is anticipated that most medical cannabis pharmacies will have five or less concurrent users and therefore, purchase the entellitrak Professional Edition which has a one-time perpetual license fee of $76,302 and an annual support and upgrade subscription fee of $15,260. The $15,260 annual support and subscription fee will not increase more than 2% annually unless a compelling business need arises, and with consultation and approval of the Department.

Section R380-406-7 establishes security standards for medical cannabis pharmacies. According to the industry, estimated costs of security equipment (i.e. cameras and monitors, access control, panic button(s), burglary system) range from $34,000 to $60,000 for initial purchase and installation. Annual maintenance of this security equipment ranges between $1,000 and $1,500 per year. Estimated costs of infrastructure (i.e. installing steel doors, adding walls, bullet proof glass, building vaults) range between $80,000 and $100,000 for initial installation. Maintenance costs of these items will be low.

Section R380-406-8 establishes inventory standards for medical cannabis pharmacies. One standard is that pharmacies use the state's designated inventory control system (ICS) to establish a record of each transaction. This means that each medical cannabis pharmacy must purchase the state of Utah's designated ICS which is MJ Freeway's Leaf Data Systems software programmed to Utah's specifications. The cost of the ICS is a $599 per month subscription fee.

This rule will fiscally impact only businesses who are awarded a medical cannabis pharmacy licenses through the procurement process.

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

Joseph K. Miner, MD, Executive Director

Citation Information

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

Title 26, Chapter 61a	Subsection 26-61a-501(13)	Subsection 26-61a-501(12)
Subsection 26-1-5(1)	Subsection 26-61a-503(3)	Subsection 26-61a-605(5)

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin.*

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-406. Medical Cannabis Pharmacy.
R380-406-1. Authority and Purpose.

Pursuant to Sections 26-1-5(1), 26-61a-501(12), 26-61a-501(13), 26-61a-503(3) and 26-61a-605(5), this rule establishes general medical cannabis pharmacy operating standards, partial fill standards, medical cannabis pharmacy operating plan requirements, cannabis product transportation standards, cannabis product waste and disposal standards, cannabis product recall standards, duties and requirements of a pharmacist-in-charge, security standards, supervision standards, inventory standards, cannabis product packaging standards, and standards related to closing a medical cannabis pharmacy.

R380-406-2. Definitions.

As used in this rule:

(1) "Cannabis waste" means cannabis product that is damaged, deteriorated, mislabeled, expired, returned, subject to a recall, or enclosed within containers or packaging that has been opened or breached.

R380-406-3. Medical Cannabis Pharmacy - General Operating Standards.

(1) In addition to general operating standards established in Title 26, Chapter 61a, Part 5, all medical cannabis pharmacies shall comply with the operating standards established in this rule. All medical cannabis pharmacies shall:

(a) be well lit, well ventilated, clean, and sanitary;

(b) maintain a current list of employees working at the medical cannabis pharmacy. The list shall include employee names, Department registration license classification and license numbers, registration expiration dates, and work schedule. The list shall be

readily retrievable for inspection by the Department and may be maintained in paper or electronic form.

(c) have a counseling area to allow for confidential patient counseling;

(d) have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to medical cannabis pharmacy personnel:

(i) Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(ii) R380-400 through R380-411, Utah Medical Cannabis Act Rule.

(2) A medical cannabis pharmacy shall not distribute medical cannabis or a medical cannabis device to a medical cannabis cardholder unless an employee who is a PMP is physically present and immediately available in the medical cannabis pharmacy.

(3) A medical cannabis pharmacy location shall be open for cardholders to purchase medical cannabis products and medical devices for a minimum of 35 hours a week, except as authorized by the Department.

(4) A medical cannabis pharmacy that closes during normal hours of operation shall implement procedures to notify cardholders when the medical cannabis pharmacy will resume normal hours of operation. Such procedures may include, but are not limited to, telephone system messages and conspicuously posted signs.

(5) All deliveries from a cannabis processing facility or another medical cannabis pharmacy shall be carried out under the direct supervision of a PMP or pharmacy agent who shall be present to accept the delivery. Upon delivery, the medical cannabis or medical cannabis device shall immediately be placed in the limited access area of the medical cannabis pharmacy.

(6) A medical cannabis pharmacy shall protect at all times confidential cardholder data and information stored in the EVS such that access to and use of the data and information is limited to those individuals and purposes authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act and this rule.

(7) A medical cannabis pharmacy shall not dispense expired, damaged, deteriorated, misbranded, adulterated, or opened medical cannabis.

(8) A medical cannabis pharmacy license cannot be sold or transferred.

R380-406-4. Medical Cannabis Pharmacy -- Operating Plan.

(1) Pursuant to Section 26-61a-301, all medical cannabis pharmacy license applications shall include an operating plan that includes, at a minimum, the following:

(a) any information requested in the application;

(b) all information listed in Section 26-61a-301;

(c) a plan to comply with all applicable operating standards, statutes and administrative rules including but not limited to:

(i) Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(ii) R380-400 through R380-411, Utah Medical Cannabis Act Rule.

(2) The Department may require that the applicant for a medical cannabis pharmacy license to make changes to its operating plan before issuing a pharmacy license. The applicant shall submit a copy of its updated operating plan with the required changes and receive Department approval of the plan, before the Department awards the license.

(3) Once the Department issues a license, any changes to a medical cannabis pharmacy's operating plan are subject to the approval of the Department. A medical cannabis pharmacy shall submit a notice, in a manner determined by the Department, at least 14 days prior to the date that it plans to implement any changes to its operating plan.

R380-406-5. Medical Cannabis Pharmacy -- Operating Standards -- Pharmacist-In- Charge.

(1) A medical cannabis pharmacy's pharmacist-in-charge (PIC) shall have the responsibility to oversee the medical cannabis pharmacy's operation in compliance with Chapter 26, Title 61a, Utah Medical Cannabis Act and Utah Administrative Rule R380-400 through R380-411, Utah Medical Cannabis Act Rule. The PIC shall generally supervise the medical cannabis pharmacy, though the PIC is not required to be on site during all business hours.

(2) A unique email address shall be established by the PIC or responsible party for the medical cannabis pharmacy to be used for self-audits or medical cannabis pharmacy alerts initiated by the Department. The PIC or responsible party shall notify the Department of the medical cannabis pharmacy's email address in the initial application for licensure.

(3) The duties of the PIC shall include:

(a) ensure that PMPs and pharmacy agents at the medical cannabis pharmacy appropriately interpret and distribute recommendations in a suitable container appropriately labeled for subsequent administration or use by a patient;

(b) ensure that medical cannabis and medical cannabis devices are distributed safely and accurately with correct dosage parameters as recommended;

(c) ensure that medical cannabis and medical cannabis devices are distributed with information and instruction as necessary for proper utilization;

(d) ensure that PMPs and pharmacy agents communicate to the cardholder, at their request, information concerning any medical cannabis or medical cannabis device distributed to the cardholder;

(e) ensure that a reasonable effort is made to obtain, protect, record, and maintain patient records;

(f) education and training of medical cannabis pharmacy personnel;

(g) establishment of polices for procurement of medical cannabis, medical cannabis devices, and educational material sold at the facility;

(h) distribution and disposal of medical cannabis and medical cannabis devices from the medical cannabis pharmacy;

(i) appropriate storage of all medical cannabis and medical cannabis devices;

(j) maintenance of records of all transactions of the medical cannabis pharmacy necessary to maintain accurate control and accountability for all materials required by applicable state laws;

(k) establishment and maintenance of effective controls against theft or diversion of medical cannabis or medical cannabis devices and records for such products;

(l) legal operation of the medical cannabis pharmacy including meeting all inspection and other requirements of all state laws governing the medical cannabis pharmacies;

(m) implementation of an ongoing quality assurance program that monitors performance of the personnel at the medical cannabis pharmacy;

(n) ensure that the point of sale (POS) is in working order;

(o) ensure that all relevant information is submitted to the state's ICS and EVS in a timely manner;

(p) ensure that all medical cannabis pharmacy personnel have appropriate licensure and registration;

(q) ensure that no medical cannabis pharmacy operates with a ratio of medical cannabis pharmacy medical provider to pharmacy agents that results in, or reasonably would be expected to result in, a reasonable risk to harm to public health, safety, and welfare;

(r) ensure that the PIC assigned to the medical cannabis pharmacy is recorded with the Department and the Department is notified of a PIC change within 30 days of the change; and

(s) ensure, with regard to the unique email address used for self-audits or medical cannabis pharmacy alerts, that:

(i) the medical cannabis pharmacy uses a single email address; and

(ii) the medical cannabis pharmacy notifies the Department, on the form prescribed, of any change in the email address within seven calendar days of the change.

R380-406-6. Medical Cannabis Pharmacy -- Operating Standards -- Supervision.

(1) A medical cannabis pharmacy is always under the full and actual charge of the medical cannabis pharmacy's PIC but it shall be under the direct supervision of at least one supervising PMP who is physically present at all times when a medical cannabis pharmacy is open to the public.

(2) A medical cannabis pharmacy PIC is not required to be in the medical cannabis pharmacy at all times but shall be available for contact within a reasonable period with the supervising PMP.

(3) A medical cannabis pharmacy shall never operate with a supervision ratio of PMP to pharmacy agent that results in, or reasonably would be expected to result in, an unreasonable risk to harm to public health, safety, and welfare.

R380-406-7. Medical Cannabis Pharmacy -- Security Standards.

(1) A medical cannabis pharmacy shall comply with security standards established in Section 26-61a-501 and this rule.

(2) A medical cannabis pharmacy shall have security equipment sufficient to deter and prevent unauthorized entrance into the limited access areas of the medical cannabis pharmacy that includes equipment required in this Section.

(3) A medical cannabis pharmacy shall have a system to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular or private radio signals, or other mechanical or electronic device.

(4) A medical cannabis pharmacy shall be equipped with a secure lock on any entrances to the medical cannabis pharmacy.

(5) A medical cannabis pharmacy shall have electronic monitoring including:

(a) at least one 19-inch or greater call-up monitor;

(b) a printer capable of immediately producing a clear still photo from any video camera image;

(c) video cameras with a recording resolution of at least 640 x 470 or the equivalent which provide coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building and which are capable of identifying any activity occurring in or adjacent to the building;

(d) all video cameras shall record continuously, 24 hours a day, 7 days a week;

(e) a video camera at each point-of-sale location which allows for the identification of any medical cannabis cardholder;

(f) a method for storing video recordings from the video cameras for at least 45 calendar days;

(g) for all locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft;

(h) for footage stored on a remote server, access shall be restricted to protect from employee tampering;

(i) a failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and

(j) sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage;

(k) a date and time stamp embedded on all video camera recordings which shall be set correctly; and

(l) a panic alarm in the interior of the facility which is a silent security alarm system signal generated by the manual activation of a device intended to signal a robbery in progress.

(6) Security measures implemented by a medical cannabis pharmacy to deter and prevent unauthorized entrance in areas containing products, theft of product, and to ensure the safety of employees and medical cannabis cardholders, shall include the following:

(a) store all medical cannabis and medical cannabis devices in a secure locked limited access area in such a manner as to prevent diversion, theft, and loss;

(b) notwithstanding (5)(a), a medical cannabis pharmacy may display, in secure, locked cases, a sample of each product offered. These display cases shall be transparent. An authorized PMP or pharmacy agent may remove an example of medical cannabis or medical cannabis device from the case and provide it to a cardholder for inspection, provided the patient does not consume or otherwise use the sample. Inside the medical cannabis pharmacy, all medical cannabis and medical cannabis product shall be stored in a limited access area during non-business hours.

(c) keep all safes, vaults, and any other equipment or areas used for storage, including prior to disposal, of product securely locked and protected from entry, except for the actual time required to remove or replace medical cannabis;

(d) keep all locks and security equipment in good working order and shall test such equipment at least two times per calendar year;

(e) prohibit keys, if any, from being left in the locks, or stored or placed in a location accessible to persons other than specifically authorized personnel;

(f) prohibit accessibility of security measures, such as combination numbers, passwords, or electronic or biometric security systems, to persons other than specifically authorized personnel;

(g) ensure that the outside perimeter of the building is sufficiently lit to facilitate surveillance;

(h) ensure that all medical cannabis is kept out of plain sight and is not visible from a public place, outside of the medical cannabis pharmacy;

(i) develop emergency policies and procedures for securing all product following any instance of diversion, theft, or loss of product, and conduct an assessment to determine whether additional safeguards are necessary;

(j) at a medical cannabis pharmacy where transactions are conducted in cash, establish procedures for safe cash handling and cash transportation to financial institutions to prevent theft, loss and associated risks to the safety of employees, customers and the general public;

(k) while inside the medical cannabis pharmacy, all employees shall wear identification tags or similar forms of identification that clearly identify them to the public, including their position at the medical cannabis pharmacy as a PMP or pharmacy agent; and

(l) prevent individuals from remaining on the premises of the medical cannabis pharmacy if they are not engaging in activity expressly or by necessary implication permitted by Title 26, Chapter 61a, Utah Medical Cannabis Act.

(7) A medical cannabis pharmacy shall include the following areas of security:

(a) public waiting area;

(b) cardholder only area; and

(c) limited access area.

(8) A medical cannabis pharmacy shall allow only medical cannabis cardholders, PMPs, pharmacy agents, authorized vendors, contactors and visitors, to have access to the cardholder area of the medical cannabis pharmacy.

(9) All outside vendors, contractors, and visitors must obtain a visitor identification badge prior to entering the cardholder only or limited access areas of a medical cannabis pharmacy to be worn at all times when on the premises of the medical cannabis pharmacy, and shall be escorted at all times by an employee authorized to enter the medical cannabis pharmacy. The visitor identification badge must be visibly displayed at all times while in the facility. All visitors must be logged in and out, and that log shall be available for inspection by the Department at all times. All visitor identification badges shall be returned to the medical cannabis pharmacy upon exit;

(10) All product inside a medical cannabis pharmacy shall be kept in a limited access area inaccessible to any persons other than a PMP, pharmacy agent, employee of the Department, or an individual authorized by the medical cannabis pharmacy's PIC. The limited access area shall meet the following standards:

(a) be identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Limited Access Area" in lettering no smaller than one inch in height; and

(b) clearly described by the filing of a diagram of the licensed premises, in the form and manner determined by the Department, reflecting walls, partitions, counters, and all areas of entry and exit, vegetation, flowering, storage, disposal, cardholder area, and public waiting area.

(11) Only a PMP or a pharmacy agent employed at the medical cannabis pharmacy shall have access to the medical cannabis pharmacy when the medical cannabis pharmacy is closed to the public.

(12) The medical cannabis pharmacy or parent company shall maintain a record of not less than 5 years of the initials or identification codes that identify each PMP or pharmacy agent by name. The initials or identification codes shall be unique to ensure that each PMP or pharmacy agent can be identified. Identical initials or identification codes shall not be used for different PMPs or pharmacy agents.

R380-406-8. Medical Cannabis Pharmacy -- Operating Standards -- Inventory.

(1) A medical cannabis pharmacy shall be equipped for orderly inventory storage of medical cannabis products and medical cannabis devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of product inventory.

(2) A medical cannabis pharmacy shall use the state's ICS to establish a record of each transaction and day's beginning, acquisitions, sales, disposal and ending inventory.

(3) A medical cannabis pharmacy shall input in the ICS information regarding the purchase of medical cannabis or medical cannabis devices immediately after a transaction with a cardholder is closed so reporting of purchases to the ICS across all medical cannabis pharmacies in Utah will be in real-time.

(4) At the close of each business day, a medical cannabis pharmacy must reconcile the medical cannabis and medical cannabis devices at the medical cannabis pharmacy with the medical cannabis pharmacy's inventory.

(5) A medical cannabis pharmacy's supervising PMP shall conduct an audit of a medical cannabis pharmacy's daily inventory at least once a week. A PMP shall conduct annual comprehensive inventories of products at a medical cannabis pharmacy. The PMP conducting the annual inventory shall document the time of the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed annual inventory.

(a) If the audit identifies a reduction in the amount of medical cannabis in the medical cannabis pharmacy's inventory is not due to documented causes, the medical cannabis pharmacy shall determine where the loss occurred and immediately take and document corrective action. The medical cannabis pharmacy shall immediately inform the Department of the loss by telephone and provide written notice of the loss and the corrective action taken within two business days after first discovery.

(b) If the reduction in the amount of medical cannabis or medical cannabis devices in the inventory is due to criminal activity or suspected criminal activity, the medical cannabis pharmacy shall immediately make a report identifying the circumstances surrounding reduction to the Department and law enforcement with jurisdiction where the suspected criminal acts occurred.

(c) If the audit identifies an increase in the amount of medical cannabis or medical cannabis devices in the medical cannabis pharmacy's inventory not due to documented causes, the medical cannabis pharmacy shall determine where the increase occurred and take and document corrective action.

(6) All records of each day's beginning inventory, weekly inventory, and comprehensive annual inventory shall be kept for a period of five years at the medical cannabis pharmacy where the medical cannabis and medical marijuana devices are located. Any medical cannabis pharmacy intending to maintain such records at a location other than the medical cannabis pharmacy must first send a written request to the Department. The request shall contain the medical cannabis pharmacy name and license number and the name and address of the alternate location. The Department will send written notification to the medical cannabis pharmacy documenting the approval or denial of the request. A copy of the Department's

approval shall be maintained with the other records. Any such alternate location shall be secured and accessible only to authorized medical cannabis pharmacy employees.

(7) A medical cannabis pharmacy shall maintain the documentation required of this rule in a secure, locked location for five years from the date on the document. These records may be kept electronically if the method is approved by the Department and the records are backed-up each business day;

(8) Provide any documentation required to be maintained in this rule to the Department for review upon request.

R380-406-9. Medical Cannabis Pharmacy -- Operating Standards -- Transportation.

(1) Transport of medical cannabis from a medical cannabis pharmacy to another location shall occur only when:

(a) a home delivery medical cannabis pharmacy is delivering shipments of medical cannabis or medical cannabis devices to cardholder's home address;

(b) a medical cannabis pharmacy or cannabis production establishment is transporting medical cannabis or medical cannabis devices from a medical cannabis pharmacy facility to a cannabis production establishment facility or waste disposal location to be disposed of; and

(c) a product recall is initiated and medical cannabis or medical cannabis devices must be returned from a medical cannabis pharmacy to the cannabis production establishment.

(2) Medical cannabis and medical cannabis devices to be returned to the cannabis production establishment shall be:

(a) logged into the ICS;

(b) stored in a locked container with clear and bold lettering: "Return"; and

(c) prepared in compliance with any guidelines and protocols of the cannabis production establishment for collecting, storing and labeling returned items.

(3) A PMP or pharmacy agent accepting a shipment of medical cannabis or medical cannabis devices at a medical cannabis pharmacy facility from a cannabis production establishment shall:

(a) obtain a copy of the transport manifest and safeguard the manifest for recordkeeping;

(b) not delete, void or change information provided on the transport manifest once it arrives at the medical cannabis pharmacy;

(c) ensure that the medical cannabis and medical devices received are as described in the transport manifest and record the amounts received into the ICS;

(d) clearly record on the manifest their unique initials or identification codes and the actual date and time of receipt of the medical cannabis or medical cannabis device;

(e) if differences between the quantity specified in the transport manifest and the quantities received occur, document the changes in the ICS; and

(f) log in the ICS any changes to a medical cannabis product or medical cannabis device that may have occurred while in transport.

R380-406-10. Medical Cannabis Pharmacy -- Operating Standards -- Packaging.

(1) Medical cannabis in the following dosage forms shall be delivered to a medical cannabis pharmacy from a cannabis processing facility or another medical cannabis pharmacy in their final container:

(a) concentrated oil;

(b) liquid suspension;

(c) topical preparation;

(d) transdermal preparation;

(e) gelatinous cube;

(f) sublingual preparation; and

(g) resin or wax.

(2) Medical cannabis in the following dosage forms may be delivered to a medical cannabis pharmacy from a cannabis processing facility in either a final container or a bulk container to later be separated into a final packaging prior to being dispensed to a cardholder:

(a) tablet;

(b) capsule; and

(c) unprocessed cannabis flower in a blister pack.

R380-406-11. Medical Cannabis Pharmacy -- Operating Standards -- Cannabis Disposal and Waste.

(1) A medical cannabis pharmacy's cannabis waste may be disposed of at either a medical cannabis pharmacy location or a location of a cannabis production establishment licensed by the UDAF.

(2) In addition to complying with standards for cannabis disposal and waste established in Section 26-61a-501, a medical cannabis pharmacy shall ensure compliance with standards established in R68-27-12, Cannabis Waste Disposal. When handling cannabis waste, a medical cannabis pharmacy shall do the following:

(a) designate a location in the limited access area of the medical cannabis pharmacy where cannabis waste shall be securely locked and stored;

(b) designate a lockable container or containers that are clearly and boldly labeled with the words "Not for Sale or Use";

(c) ensure logging of the cannabis product in the ICS at the time of disposal with appropriate information including:

(i) a description of and reason for the cannabis product being disposed of;

(ii) date of disposal;

(iii) method of disposal; and

(iv) name and registration identification number of the agent responsible for the disposal.

R380-406-12. Medical Cannabis Pharmacy -- Operating Standards -- Product Recall.

(1) A recall may be initiated by a cannabis production establishment, a medical cannabis pharmacy, the Department, or the UDAF.

(2) A medical cannabis pharmacy's recall plan shall include, at a minimum:

(a) a designation of at least one employee who serves as the recall coordinator;

(b) immediate notification of the Department, UDAF, and the cannabis production establishment from which it obtained the cannabis product in question that shall never be a period to exceed 24 hours upon becoming aware of a complaint about the cannabis product in question;

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

(d) procedures to retrieve and destroy product; and

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

(3) The medical cannabis pharmacy shall track the total amount of affected cannabis product and the amount of cannabis

product returned to the medical cannabis pharmacy as part of the recall.

(4) The medical cannabis pharmacy shall coordinate the destruction of the cannabis product with the Department and the UDAF and allow the UDAF to oversee the destruction of the final product.

(5) A medical cannabis pharmacy shall notify the Department before initiating a voluntary recall.

R380-406-13. Medical Cannabis Pharmacy -- Partial Filling.

A PMP or pharmacy agent who partially fills a recommendation for a medical cannabis cardholder shall specify in the ICS the following:

(1) date of partial fill;

(2) quantity supplied to cardholder;

(3) quantity remaining of the recommendation partially filled; and

(4) a brief explanation as to why the recommendation was partially filled.

R380-406-14. Medical Cannabis Pharmacy -- Operating Standards -- Closing a Pharmacy.

(1) At least 14 days prior to the closing of a medical cannabis pharmacy, the pharmacist-in-charge shall comply with the following:

(a) send written notice to the Department containing the following information:

(i) the name, address, and Department issued license number of the medical cannabis pharmacy;

(ii) a surrender of the license issued to the medical cannabis pharmacy;

(iii) a statement attesting:

(A) that a comprehensive inventory has been conducted;and

(B) the manner in which the medical cannabis product and medical cannabis devices were transferred or disposed;

(C) the anticipated date of closing;

(D) the name, address, and Department issued license number of the medical cannabis pharmacy or cannabis production establishment acquiring the medical cannabis and medical cannabis devices from the medical cannabis pharmacy that is closing;

(E) the date of transfer of when the medical cannabis product and medical cannabis devices will occur; and

(F) the name and address of the medical cannabis pharmacy to which the orders, including all refill information, and patient records, were transferred;

(b) post a closing notice in a conspicuous place at all public entrance doors to the medical cannabis pharmacy which shall contain the following information:

(i) the date of closing; and

(ii) the name, address, and telephone number of the medical cannabis pharmacy acquiring the recommendation orders, including all refill information and customer records of the medical cannabis pharmacy.

(2) If the medical cannabis pharmacy closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or emergency circumstances and the PIC cannot provide notification 14 days prior to the closing, the PIC shall provide notification to the Department of the closing no later than 24 hours after the closing.

(3) If the PIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

(4) On the date of the closing, the PIC shall remove all medical cannabis product and medical cannabis devices from the medical cannabis pharmacy by one or a combination of the following methods:

(a) transport them to a cannabis processing facility for credit or disposal; or

(b) transfer or sell them to a person who is legally entitled to possess drugs, such as another medical cannabis pharmacy in the State of Utah.

(5) The PIC shall transfer all the orders for medical cannabis and medical cannabis devices to a licensed medical cannabis pharmacy in the State of Utah.

(6) The PIC shall move all signs or notify the landlord of the property that it is unlawful to use the word "medical cannabis pharmacy" or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead, or tend to mislead the public that a medical cannabis pharmacy is located at this address.

KEY: medial cannabis, medical cannabis pharmacy, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 63G-3; 26-1-5(1); 26-61a; 26-61a-501; 26-61-501(12); 26-61a-501(13); 26-61a-503(3); 26-61a-605(5)

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-407**	**Filing No. 52346**

Agency Information

1. Agency:	Utah Department of Health, Administration	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Medical Cannabis Pharmacy Agent
3. Effective Date:

11/15/2019

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

Subsection 26-61a-401(5) of the Utah Medical Cannabis Act requires that the Utah Department of Health (Department) establish rules related to medical cannabis pharmacy agents.

5. Summary of the new rule or change:

This rule filing establishes medical cannabis pharmacy agent duties and responsibilities, application procedures, renewal application procedures, and certification standards.

6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Under Section R380-407-5, minimal cost impact on the state budget comes as a result of the Department adopting a rule that requires that the certification standard for initial and renewal of registration of a pharmacy agent will be successful completion of an online course developed by the Department. The extent of this course will be a review of information related to laws applicable to practice as a pharmacy agent and an electronic acknowledgement of having understood the laws.

B) Local governments:

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.

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

Under Section R380-407-5, minimal savings impact on medical cannabis pharmacies comes as a result of the Department adopting a rule that requires that the certification standard for initial and renewal of registration of a pharmacy agent will be successful completion of an online course developed by the Department. The extent of this course will be a review of information related to laws applicable to practice as a pharmacy agent and an electronic acknowledgement of having understood the laws. Had the Department required that pharmacy agent complete a course provided by a private vendor, the cost of the courses would likely be paid by medical cannabis pharmacies. The cost of those courses would likely be between $150 and $300 during every two year renewal cycle.

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***)**:**

Under Section R380-407-5, minimal savings impact on medical cannabis pharmacy agents comes as a result of the Department adopting a rule that requires that the certification standard for initial and renewal of registration of a pharmacy agent will be successful completion of an online course developed by the Department. The extent of this course will be a review of information related to laws applicable to practice as a pharmacy agent and an electronic acknowledgement of having understood the laws. Had the Department required that pharmacy agent complete a course provided by a private vendor, applicants for agent registration would have to pay the cost of those courses which would likely be between $150 and $300 during every two year renewal cycle.

8. Compliance costs for affected persons:

Under Section R380-407-5, minimal savings impact on medical cannabis pharmacy agents comes as a result of the Department adopting a rule that requires that the certification standard for initial and renewal of registration of a pharmacy agent will be successful completion of an online course developed by the Department. The extent of this course will be a review of information related to laws applicable to practice as a pharmacy agent and an electronic acknowledgement of having understood the laws. Had the Department required that pharmacy agent complete a course provided by a private vendor, applicants for agent registration would have to pay the cost of those courses which would likely be between $150 and $300 during every two year renewal cycle.

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

This rule filing establishes medical cannabis pharmacy agent duties and responsibilities, application procedures, renewal application procedures, and certification standards. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act. Under Section R380-407-5, minimal savings impact on medical cannabis pharmacies and pharmacy agents come as a result of the Department adopting a rule that requires that the certification standard for initial and renewal of registration of a pharmacy agent will be successful completion of an online course developed by the Department. The extent of this course will be a review of information related to laws applicable to practice as a pharmacy agent and an electronic acknowledgement of having understood the laws. Had the Department required that pharmacy agent complete a course provided by a private vendor, the cost of the courses would likely be paid by medical cannabis pharmacies. The cost of those courses would likely be between $150 and $300 during every two year renewal cycle. This rule will fiscally impact any business that provides or pays for the coursework and applications for medical professionals to become qualified medical providers.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 26, Chapter 61a	Subsection 26-1-5(1)	Subsection 26-61a-401(5)
Title 63G, Chapter 3		

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin.*			
Agency head or designee, and title:	Joseph K. Miner. MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-407. Medical Cannabis Pharmacy Agent.
R380-407-1. Authority and Purpose.

Pursuant to Subsections 26-1-5(1) and 26-61a-401(5), this rule establishes medical cannabis pharmacy agent duties and responsibilities, application procedures, renewal application procedures, and certification standards.

R380-407-2. Medical Cannabis Pharmacy Agent -- Duties and Responsibilities.

(1) A pharmacy agent may perform the following duties:

(a) within the dosage parameters specified by a QMP or PMP, assist the cardholder with understanding available products, proper use of a medical device, medical cannabis strains and methods of consumption or application;

(b) using the ICS, verify the status of an individual's medical cannabis card and dosage parameters in a patient recommendation;

(c) enter and retrieve information from the ICS;

(d) authorize entry of a cardholder into the cardholder counseling area;

(e) take refill orders from a QMP;

(f) provide pricing and product information;

(g) accurately process cardholder payments including issuance of receipts, refunds, credits, and cash;

(h) prepare labels;

(i) retrieve medical cannabis and medical cannabis devices from inventory;

(j) accept new medical cannabis or medical cannabis device orders left on voicemail for a PMP to review;

(k) verbally offer to a cardholder the opportunity for counseling with a PMP regarding medical cannabis or a medical cannabis device;

(l) assist with dispensing of product to cardholders;

(m) screen calls for a PMP;

(n) preparing inventories of medical cannabis and medical cannabis devices;

(o) transport medical cannabis or medical cannabis devices; and

(p) assist with maintaining a safe, clean, and professional environment.

(2) A pharmacy agent shall not perform the following duties:

(a) receive dosage parameters for a patient's recommendation over the phone or in person;

(b) access patient information in the EVS;

(c) view medical treatment and medication history in the EVS; and

(d) determine or modify dosage parameters in a patient's recommendation; and

(e) provide counseling or consultation regarding a patient's medical condition or medical treatment.

R380-407-3. Medical Cannabis Pharmacy Agent -- Application Procedures.

(1) The application procedures established in this section shall govern all applications for initial issuance of a pharmacy agent registration card under Title 26, Chapter 61a.

(2) Each pharmacy agent card applicant shall apply upon forms available from the Department.

(3) The Department may issue a card to an applicant who submits a complete application and the Department determines that the applicant meets the card requirements.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to the applicant a written notice of incomplete application that the application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) Written notices of denial and incomplete application shall be sent to the applicant's last email address shown in the Department's EVS database.

(7) Each applicant is required to maintain a current email address with the Department. Notice sent to the last email address on file with the Department constitutes legal notice.

R380-407-4. Medical Cannabis Pharmacy Agent - Renewal Application Procedures.

(1) Renewal application procedures established in the rule shall apply to applicants applying for renewal of a pharmacy agent registration card under Title 26, Chapter 61a.

(2) Each card applicant shall apply upon renewal application forms available from the Department.

(3) The Department shall issue a card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the card requirements.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete renewal application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide a written notice of incomplete application to an applicant who submits an incomplete application, which notice shall advise the applicant that the renewal application is incomplete and that the renewal application will be closed, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) The Department shall send a renewal notice to each cardholder at least 60 days prior to the expiration date shown on the cardholder's card. The notice shall include directions for the cardholder to renew the card via the Department's website.

(7) Renewal notices shall be sent by email addressed to the cardholder's last email shown in the Department's EVS database.

(8) Each cardholder is required to maintain a current email address with the Department. Emailing to the last email address furnished to the Department constitutes legal notice.

(9) Renewal notices shall advise each cardholder that a card automatically expires on the expiration date and is no longer valid if it is not renewed prior to the expiration date.

(10) If an individual's pharmacy agent registration card expires, the individual may submit a card renewal application at any time regardless of the length of time passed since the expiration of the card.

R380-407-5. Medical Cannabis Pharmacy Agent -- Certification Standard.

The certification standard for applicants for initial and renewal registration of a pharmacy agent card will be successful completion of an online course developed by the Department.

KEY: medial cannabis, medical cannabis pharmacy, medical cannabis pharmacy agent, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 63G-3; 26-1-5(1); 26-61a; 26-61a-401(5)

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-408**	**Filing No. 52347**

Agency Information

1. Agency:	Utah Department of Health	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Home Delivery and Courier
3. Effective Date:
11/15/2019
4. Purpose of the new rule or reason for the change:
Section 26-61a-606, Utah Medical Cannabis Act, requires the Utah Department of Health (Department) to establish rules related to medical cannabis couriers and medical cannabis courier agents.
5. Summary of the new rule or change:
This proposed rule establishes the requirements for home delivery operating standards, home delivery agent operating standards, courier agent application procedures, courier agent renewal application procedures, and courier agent certification standards.
6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or

X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule will not result in a fiscal impact to the state budget because this rule does not establish requirements for the Department.

B) Local governments:

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.

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

Section R380-408-2 establishes operating standards for medical cannabis home delivery services. The cost impact to a home delivery medical cannabis pharmacy or a medical cannabis courier equipping their vehicle with a GPS tracking system that provides real time tracking to off-site locations (i.e. the pharmacy) ranges from $350 to $1,100 per year. The estimated cost impact to a home delivery medical cannabis pharmacy or a medical cannabis courier equipping their vehicle with an alarm system ranges from $98 to $400 per vehicle.

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***)**:**

This proposed rule will not result in a fiscal impact to the persons other than small businesses, businesses, or local government entities because this rule does not establish requirements for enforcement by these persons.

8. Compliance costs for affected persons:

This proposed rule will not result in a fiscal impact to the affected persons because this rule does not establish requirements for enforcement by these persons.

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

This proposed rule establishes the requirements for home delivery operating standards, home delivery agent operating standards, courier agent application procedures, and courier agent renewal application procedures and courier agent certification standards. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act.

According to the industry, estimated costs of security equipment (i.e. cameras and monitors, access control, panic button(s), burglary system) range from $34,000 to $60,000 for initial purchase and installation. Annual maintenance of this security equipment ranges between $1,000 and $1,500 per year. Estimated costs of infrastructure (i.e. installing steel doors, adding walls, bullet proof glass, building vaults) range between $80,000 and $100,000 for initial installation. Maintenance costs of these items will be low. The impact of the operating standards set by the rule to a home delivery medical cannabis pharmacy or a medical cannabis courier equipping their vehicle with a GPS tracking system that provides real time tracking to off-site locations (i.e. the pharmacy) ranges from $350 to $1,100 per year. The estimated cost impact to a home delivery medical cannabis pharmacy or a medical cannabis courier equipping their vehicle with an alarm system ranges from $98 to $400 per vehicle.

This rule will fiscally impact only businesses who are authorized to operate home delivery of medical cannabis products.

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

Joseph K. Miner, MD, Executive Director

Citation Information

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

Title 26, Chapter 61a	Section 26-41a-605	Subsection 26-41a-604(14)
Section 26-61a-606	Section 26-41a-606	Section 26-41a-607
Subsection 26-1-5(1)		

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin.*			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-408. Home Delivery and Courier.
R380-408-1. Authority and Purpose.

Pursuant to Sections 26-1-5(1) and 26-61a-606, this rule establishes home delivery operating standards, home delivery agent operating standards, courier agent application procedures, courier agent renewal application procedures and courier agent certification standards.

R380-408-2. Home Delivery Service -- Operating Standards.

(1) In addition to general operating standards established in Sections 26-41a-605 through 607, home delivery medical cannabis pharmacies and couriers shall comply with the operating standards established in this rule. The following operating standards apply to home delivery medical cannabis pharmacies and couriers:

(a) maintain an updated written operating plan for the home delivery service describing plans to comply with standards established in this section and meeting the requirements of Subection 26-61a-604 (14);

(b) ensure accurate record keeping of delivery information in the ICS;

(c) maintain a record of not less than 5 years of the initials or identification codes that identify each pharmacy agent or courier agent by name. The initials or identification codes shall be unique to ensure that each pharmacy agent or courier agent can be identified. Identical initials or identification codes shall not be used for different pharmacy agents or courier agents;

(d) lock medical cannabis and medical cannabis devices that are transported in a fully enclosed box, container, or cage that is secured inside a delivery vehicle that ensures appropriate storage temperatures throughout the delivery process to maintain the integrity of the product;

(e) maintain a current list, either paper or electronic, of employees working for the home delivery medical cannabis pharmacy or courier who make home deliveries that shall include employee names, Department registration license classification and license numbers, and registration expiration dates;

(f) upon request, provide the Department with information regarding any vehicle used for the home delivery service, including the vehicle's make, model, color, vehicle identification number, license plate number, insurance number, and Division of Motor Vehicle registration number;

(g) ensure that a manifest is not modified in any way after a pharmacy agent or courier agent departs from a home delivery medical cannabis pharmacy facility with a shipment appearing on the manifest;

(h) ensure that no persons other than a pharmacy agent or courier agent is in a delivery vehicle during a delivery or during the time medical cannabis or medical cannabis devices are in the vehicle; and

(i) ensure that trip log documentation showing a specific route of delivery exists for a route driven by a pharmacy agent or courier agent on a specific day is immediately available for review by the Department, upon request.

(2) When delivering medical cannabis and medical cannabis devices to medical cannabis cardholder homes, a pharmacy agent or courier agent shall not:

(a) drop off medical cannabis or medical cannabis devices with anyone other than a medical cannabis cardholder;

(b) perform a home delivery before 6am or after 10pm;

(c) leave medical cannabis or medical cannabis devices unattended in a delivery vehicle for more than one hour;

(d) make changes in dosage or quantity at the request of the medical cannabis cardholder during a delivery; and

(e) consume medical cannabis while delivering medical cannabis.

(3) When delivering medical cannabis and medical cannabis devices, pharmacy agents and courier agents employed by the home delivery medical cannabis pharmacy or courier shall:

(a) wear identification tags or similar forms of identification that clearly identify them to medical cannabis cardholders, including their position as a pharmacy agent or courier agent; and

(b) provide each cardholder receiving a shipment printed material that includes a home delivery medical cannabis pharmacy's contact information and hours when a PMP at the home delivery medical cannabis pharmacy is available for counseling over the phone.

(4) Vehicles used for the purpose of home delivery must meet the following standards:

(a) no marking or other indications on the exterior that may indicate what is being transported;

(b) cannot be an unmanned vehicle;

(c) have an active alarm system;

(d) have a global positioning system (GPS) monitoring device that is:

(i) not a mobile device that is easily removable;

(ii) attached to the vehicle at all times that the vehicle contains medical cannabis or medical cannabis devices; and

(iii) capable of storing and transmitting GPS data so it can be monitored by the home delivery medical cannabis pharmacy during transport of medical cannabis and medical cannabis devices;

(e) be subject to inspection by the Department at any time; and

(f) not transport medical cannabis or medical cannabis devices beyond what appears on a manifest or what a pharmacy agent or courier has picked up from a medical cannabis cardholder to be returned to the home delivery medical cannabis pharmacy.

(5) In the case of medical cannabis or a medical cannabis device that goes missing during the course of a home delivery route:

(a) the pharmacy agent or courier agent shall notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the pharmacy agent or courier agent first became aware of the missing product; and

(b) information regarding missing products shall be reported by the home delivery medical cannabis pharmacy to the Department and local law enforcement and logged in to the ICS.

(6) A courier cannot store medical cannabis or medical cannabis devices at its facility. All medical cannabis and medical

cannabis devices delivered by the courier must be picked up from a home delivery medical cannabis pharmacy facility and either delivered to the medical cannabis cardholder's residence or returned to the home delivery medical cannabis pharmacy facility.

R380-408-3. Home Delivery Agent -- Operating Standards.

(1) In addition to operating standards established in Sections 26-41a-605 through 26-61a-607, pharmacy agents and courier agents shall comply with the operating standards established in this rule. The following operating standards apply to pharmacy agents and courier agents:

(a) ensure accurate record keeping of delivery information in the ICS;

(b) ensure locking of medical cannabis and medical cannabis devices that are transported in a fully enclosed box, container, or cage that is secured inside a delivery vehicle that ensures appropriate storage temperatures throughout the delivery process to maintain the integrity of the product;

(c) ensure that a manifest is not modified in any way after they depart from a home delivery medical cannabis pharmacy facility with the shipments appearing on the manifest; and

(d) ensure that no persons other than a pharmacy agent or courier agent is in a delivery vehicle during a delivery or during the time medical cannabis or medical cannabis devices are in the vehicle.

(2) When delivering medical cannabis and medical cannabis devices to cardholder homes, a pharmacy agent or courier agent shall not:

(a) drop off medical cannabis or medical cannabis device with anyone other than a medical cannabis cardholder;

(b) perform a home delivery before 6am or after 10pm;

(c) leave medical cannabis or a medical cannabis device unattended in a delivery vehicle for more than 60 minutes;

(d) make changes in dosage or quantity on the request of the cardholder during a delivery; and

(e) consume medical cannabis while delivering medical cannabis; and

(f) transport medical cannabis or medical cannabis devices beyond what appears on a manifest.

(3) When delivering medical cannabis and medical cannabis devices, pharmacy agents and courier agents shall:

(a) wear identification tags or similar forms of identification that clearly identify them to cardholders, including their position as a pharmacy agent or courier agent; and

(b) provide each cardholder printed material that includes a home delivery medical cannabis pharmacy's contact information and hours for counseling over the phone with a PMP.

(4) In the case of medical cannabis or a medical cannabis device that goes missing during the course of a home delivery route, the pharmacy agent or courier agent shall notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the medical cannabis pharmacy agent first became aware of the missing product.

R380-408-4. Medical Cannabis Courier Agent -- Application Procedures.

(1) The application procedures established in this section shall govern applications for initial issuance of a courier agent registration card under Title 26, Chapter 61a.

(2) Each card applicant shall apply upon forms available in the EVS from the Department.

(3) The Department may issue a card only if the applicant meets the card requirements established under Title 26, Chapter 61a and by Department rule.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to the applicant a written notice of incomplete application that the application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) Written notices of denial and incomplete application shall be sent to the applicant's last email address shown in the Department's EVS database unless the applicant has requested to be notified by regular mail.

(7) Each applicant is required to maintain a current email and mailing address with the Department. Notice to the last email address on file with the Department constitutes legal notice unless the applicant has requested to be notified by regular mail.

R380-408-5. Medical Cannabis Courier Agent - Renewal Application Procedures.

(1) Renewal application procedures established in this section shall govern applications to renew a courier agent registration card under Title 26, Chapter 61a.

(2) Each card applicant shall apply upon renewal application forms available from the Department.

(3) The Department shall issue a card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the card requirements.

(4) The Department shall provide a written notice of denial to an applicant who submits a complete renewal application if the Department determines that the applicant does not meet the card requirements.

(5) The Department shall provide to the applicant a written notice of incomplete application that the renewal application will be closed unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all card requirements.

(6) The Department shall send a renewal notice to each cardholder at least 60 days prior to the expiration date shown on the cardholder's card. The notice shall include instructions to renew the card via the Department's website.

(7) Renewal notices shall be sent to the cardholder's last email shown in the Department's EVS database unless the cardholder has requested to be notified by regular mail.

(8) Each cardholder is required to maintain a current email address with the Department. Emailing to the last email address furnished to the Department constitutes legal notice unless the cardholder has requested to be notified by regular mail.

(9) It shall be the responsibility of each cardholder to maintain a current email address and mailing address with the Department.

(10) Renewal notices shall advise each cardholder that a card automatically expires on the expiration date and is no longer valid.

(11) If an individual's courier agent registration card expires, the individual may submit a card renewal application at any time regardless of the length of time passed since the expiration of the card.

R380-408-6. Medical Cannabis Courier Agent -- Certification Standard.

The certification standard for applicants for initial and renewal registration of a courier agent card will be successful completion of an online course developed by the Department.

KEY: medial cannabis, medical cannabis courier agent, medical cannabis home delivery, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 63G-3; 26-1-5(1); 26-61a; 26-61a-606; 26-61a-604(14); 26-61a-607

NOTICE OF 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R380-409**	**Filing No. 52353**

Agency Information

1. Agency:	Utah Department of Health, Administration	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Richard Oborn	801-538-4976	medicalcannabis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
State Central Patient Portal
3. Effective Date:
11/15/2019
4. Purpose of the new rule or reason for the change:
Section 26-61a-601 of the Utah Medical Cannabis Act requires the Utah Department of Health (Department) to establish rules related to the state central patient portal.
5. Summary of the new rule or change:
This rule filing establishes standards related to the state central patient portal's facilitation of an electronic medical cannabis order to a home delivery medical cannabis pharmacy.
6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.

Specific reason and justification:

The basis for filing this as an emergency rule is to formally notify individuals interested in applying to obtain 1 of 14 medical cannabis pharmacy licenses of a rule that will impact them. Individuals will have until Monday, December 2, 2019, to apply for medical cannabis pharmacy licenses via the Request for Proposal (RFP) process administrated by the Division of Purchasing. Filing this as an emergency rule provides applicants sufficient time to review the proposed rule and incorporate essential information about the rule in their responses to the RFP. Using the regular rulemaking process would delay the licensing of medical cannabis pharmacies, placing the Department in danger of not meeting statutory deadlines established in the Utah Medical Cannabis Act.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
Section R380-409-2 is written such that the Department's cost of facilitating electronic medical cannabis orders will be minimal because it will be limited to including links to individual websites established by home delivery medical cannabis pharmacies where cardholders may view available inventory and order medical cannabis products and medical cannabis devices, or educational material related to the use of medical cannabis. The Department will not be responsible for setting up a website where cardholders will view, order, and make electronic payment for product ordered online. Each home delivery medical cannabis pharmacy is responsible to set up their own website for online ordering.
B) Local governments:
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.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
Section R380-409-2 states that the state central patient portal website will include links to individual websites established by home delivery medical cannabis pharmacies where cardholders may view available inventory and order medical cannabis products and medical cannabis devices, or educational material related to the use of medical cannabis. This means that each home delivery medical cannabis pharmacy is responsible to set up a website for online ordering. The cost impact to a home delivery medical cannabis pharmacy for

setting up an online ordering website is estimated to be between $50,000 and $500,000 depending on the platform and requirements.
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***)**:**
This proposed rule will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities because this rule does not establish requirements for these persons.
8. Compliance costs for affected persons:
This proposed rule will not result in a fiscal impact to affected persons because this rule does not establish requirements for these persons.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This rule filing establishes standards related to the state central patient portal's facilitation of an electronic medical cannabis order to a home delivery medical cannabis pharmacy. It is necessary to use the emergency rulemaking process in order to use this rule in the current RFP process to issue licenses for medical cannabis pharmacies within the statutory time frame set out in the Utah Medical Cannabis Act. Section R380-409-2 states that the state central patient portal website will include links to individual websites established by home delivery medical cannabis pharmacies where cardholders may view available inventory and order medical cannabis products and medical cannabis devices, or educational material related to the use of medical cannabis. This means that each home delivery medical cannabis pharmacy is responsible to set up a website for online ordering. The cost impact to a home delivery medical cannabis pharmacy for setting up an online ordering website is estimated to be between $50,000 and $500,000 depending on the platform and requirements. It has been determined that this rule fiscally impact on a medical cannabis pharmacy businesses that provide a home delivery service.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 26-61a-601(3)		

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin*.			
Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	**Date:**	11/11/2019

R380. Health, Administration.
R380-409. State Central Patient Portal.
R380-409-1. Authority and Purpose.

Pursuant to Subsection 26-61a-601(3), this rule establishes standards related to the state central patient portal's facilitation of an electronic medical cannabis order to a home delivery medical cannabis pharmacy.

R380-409-2. Facilitation of Online Orders.

To facilitate an online order, the state central patient portal website shall include links to individual websites established by home delivery medical cannabis pharmacies where cardholders may view available inventory and order medical cannabis products and medical cannabis devices, or educational material related to the use of medical cannabis.

KEY: medial cannabis, medical cannabis patient portal, medical cannabis online orders, marijuana
Date of Enactment or Last Substantive Amendment: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 63G-3; 26-1-5(1); 26-61a; 26-61a-601

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.):	**R277-506**	**Filing No. 50461**

Agency Information

1. Agency:	Utah State Board of Education	
Street address:	250 E 500 S	
City, state, zip:	Salt Lake City, UT 84084	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7656	angie.stallings@schools.utah.gov
Cybil Child	801-538-7830	cybil.child@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
School Psychologists, School Social Workers, School Counselors, Communication Disorders (Audiologists), Speech-Language Pathologists, and Speech-Language Technicians Licenses and Programs
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the State Board of Education (Board), Subsection 53E-3-501(1)(a), which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no written comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The purpose of this rule is to specify the standards for obtaining licenses and other credentials issued by the Board for employment in the public schools as school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians; and the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/08/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R277-609**	**Filing No. 50512**

Agency Information

1. Agency:	Utah State Board of Education
Street address:	250 E 500 S
City, state, zip:	Salt Lake City, UT 84114
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule catchline:

Standards for LEA Discipline Plans and Emergency Safety Interventions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsection 53E-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control; Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction; Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers; and Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies, and directs the Board to develop model policies to assist local school boards and charter school governing boards.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no written comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule continues to be necessary because it outlines requirements for school discipline plans and policies. An local education agency's (LEA) written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/14/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R277-715**	**Filing No. 50529**

Agency Information

1. Agency:	Utah State Board of Education
Street address:	250 E 500 S
City, state, zip:	Salt Lake City, UT 84114
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule catchline:

Out-of-School Time Program Standards

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-4-301(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53E-3-508, which requires the Board to adopt

rules to set standards for high quality out-of-school time programs.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no written comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule continues to be necessary because is to set standards for high quality out-of-school time programs, and establish the programs required to adopt those standards. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	11/14/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	**R357-2**	**Filing No. 50841**

Agency Information

1. Agency:	Governor, Economic Development	
Street address:	60 E South Temple, STE 300	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	**Phone:**	**Email:**
Dane Ishihara	801-538-8664	dishihara@utah.gov

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

General Information

2. Rule catchline:

Targeted Business Tax Credit

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 63N-2-303 (7) requires the Governor's Office of Economic Development to make rules regarding the administration of targeted business income tax credit awards, and what constitutes significant new employment, significant new capital development, and a community investment project.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is authorized and mandated by state law. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Dane Ishihara, Economic Development Analyst	**Date:**	11/7/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	**R590-196**	**Filing No. 51392**

Agency Information

1. Agency:	Insurance Department	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state, zip:	Salt Lake City, UT, 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT, 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule catchline:
Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-35-104 authorizes the Insurance Commissioner to write rules that establish specific licensure and certification guidelines and standards of conduct for the business of surety bail bond insurance. This rule provides guidelines for fee and collateral standards to be used in the bail bond business, along with a disclosure form that must be used by a bail bond agent when charging fees and receiving collateral.
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 in force to avoid price gouging and the charging of fees without a prior disclosure to the consumer. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Steve Gooch, Public Information Office	**Date:**	11/15/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-197**	**Filing No. 51398**

Agency Information

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

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

General Information

2. Rule catchline:
Treatment of Guaranty Association Assessments as Qualified Assets
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-17-201(2) authorizes the Insurance Commissioner to define the assets that will be considered to be "qualified assets" in the determination of an insurer's financial condition. Subsection 31A-28-109(8) authorizes the Insurance Commissioner to approve the amounts and time periods for which contributions are treated as assets.
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:
Insurers are subject to guaranty fund assessments and states are still allowing premium tax offsets to insurers for guaranty fund assessments. As long as insurers are afforded tax offsets or other benefits for payment of guaranty fund assessments, it is appropriate to allow them as an asset, which is what this rule does. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	11/15/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-198**	**Filing No. 51397**

Agency Information

1. Agency:	Insurance Department
Room no.:	3110
Building:	State Office Building
Street address:	450 N. State St.
City, state, zip:	Salt Lake City, UT, 84114
Mailing address:	PO Box 146901
City, state, zip:	Salt Lake City, UT, 84114-6901
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule catchline:

Valuation of Life Insurance Policies Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Sections 31A-17-402 and 31A-17-512 authorize the Insurance Commissioner to adopt a method for computing reserves for life insurance policies. Sections R590-198-5, R590-198-6, and R590-198-7 of this rule specifically set standards for determination of reserves for different types of life insurance policies.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Insurance Department received one written comment regarding this rule during a rule amendment process that took place in 2015. The comment was from an association of life insurers and was in favor of the rule change.

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 ensures that life insurance companies will maintain an adequate level of reserves to pay future life insurance claims. Without this rule, life insurer reserves may dip below this threshold and not be able to pay claims. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	11/15/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-10**	**Filing No. 52034**

Agency Information

1. Agency:	School and Institutional Trust Lands
Room no.:	500
Street address:	675 East 500 South
City, state, zip:	Salt Lake City, UT 84102-2818
Mailing address:	675 East 500 South, Suite 500
City, state, zip:	Salt Lake City, UT 84102-2818
Contact person(s):	

Name:	**Phone:**	**Email:**
Mike Johnson	801-538-5180	mjohnson@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov

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

General Information

2. Rule catchline:

Expedited Rulemaking

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 53C-1-201(3)(c) specifically authorizes an "expedited" rulemaking process, outside of the traditional rulemaking process, or the emergency rulemaking process established under Title 63G, Chapter 3. The statutory authorization for expedited rules instructs the Director of the School and Institutional Trust Lands Administration, with the Board approval, to establish a procedure to enact expedited rules. Rule R850-10 sets forth the procedure used for promulgating expedited rules.

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 agency has not received any written comments concerning 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:
Statute requires that the agency establish procedures for promulgating expedited rules in order that the agency be able to react quickly to time-sensitive business opportunities in an ever changing market place. This rule sets forth the guidelines by which the agency may fulfill its fiduciary responsibilities in a timely manner. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	David Ure, Director	**Date:**	10/29/2019
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R994-305**	**Filing No. 52237**

Agency Information

1. Agency:	Department of Workforce Services, Unemployment Insurance	
Building:	Olene Walker Building	
Street address:	140 E Broadway (300 S)	
City, state, zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state, zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Collection of Contributions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 35A-4-305 requires each employer to provide wage information quarterly and pay contributions to the unemployment insurance fund based on those wages in accordance with the applicable rules of the Department of Workforce Services (Department). The same provision also explains how the Department can collect any unpaid contributions, as well as benefit overpayments, and when the Department might accept an offer in compromise, and directs the Department to make rules regarding such procedures.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has not received any comments in the last five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to explain to employers how to file quarterly reports and pay contributions, as well as the consequences for not paying when due. It also explains what action the Department can take to collect unpaid contributions and benefit overpayments. This rule also explains when and how the Department can approve an offer in compromise of unpaid contributions or overpayment. This rule is necessary to help employers, claimants, and staff understand what steps are necessary in all these circumstances. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Jon Pierpont, Executive Director	**Date:**	11/13/2019

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS

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

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

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

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	**R131-16**	**Filing No. 50232**

Agency Information

1. Agency:	Capitol Preservation Board	
Building:	Capitol Building	
Street address:	350 North State Street	
City, state, zip:	Salt Lake City, UT 84103	
Mailing address:	350 North State Street	
City, state, zip:	Salt Lake City, UT 84103	
Contact person(s):		
Name:	**Phone:**	**Email:**
Allyson Gamble	801-537-9156	agamble@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Electronic Meetings
3. Reason for the extension and the new deadline date:
Pursuant to Section 63C-9-301, the Capitol Preservation Board is required to approve the continuation of a rule. There will not be a Capitol Preservation Board Meeting before the end of 2019. The new deadline is 03/20/2020.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Allyson Gamble, Executive Director	**Date:**	11/08/2019

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Auditor
Administration
No. 44048 (REP): R123-3. State Auditor Adjudicative Proceedings.
Published: 10/01/2019
Effective: 11/07/2019

No. 44047 (REP): R123-4. Public Petitions for Declaratory Orders.
Published: 10/01/2019
Effective: 11/07/2019

No. 44049 (AMD): R123-5. Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations.
Published: 10/01/2019
Effective: 11/07/2019

Career Service Review Office
Administration
No. 44059 (AMD): R137-1. Grievance Procedure Rules.
Published: 10/01/2019
Effective: 11/07/2019

Commerce
Administration
No. 44016 (NEW): R151-55. Regulatory Sandbox Program Rule.
Published: 09/15/2019
Effective: 11/08/2019

Occupational and Professional Licensing
No. 44081 (AMD): R156-26a. Certified Public Accountant Licensing Act Rule.
Published: 10/01/2019
Effective: 11/07/2019

Real Estate
No. 44011 (AMD): R162-2c-204. License Renewal Reinstatement and Reapplication.
Published: 09/15/2019
Effective: 11/06/2019

No. 44021 (AMD): R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.
Published: 09/15/2019
Effective: 11/05/2019

No. 44013 (AMD): R162-57a-9. Renewal and Reinstatement of Project Registration.
Published: 09/15/2019
Effective: 11/05/2019

Education
Administration
No. 44064 (NEW): R277-317. Incentives for National Board Certification.
Published: 10/01/2019
Effective: 11/08/2019

No. 44069 (AMD): R277-404. Requirements for Assessments of Student Achievement.
Published: 10/01/2019
Effective: 11/08/2019

No. 44067 (NEW): R277-464. School Counselor Direct and Indirect Services.
Published: 10/01/2019
Effective: 11/08/2019

No. 44065 (NEW): R277-473. Utah Computer Science Grant.
Published: 10/01/2019
Effective: 11/08/2019

No. 44063 (AMD): R277-475. Patriotic, Civic and Character Education.
Published: 10/01/2019
Effective: 11/08/2019

No. 44068 (AMD): R277-487. Public School Data Confidentiality and Disclosure.
Published: 10/01/2019
Effective: 11/08/2019

No. 44066 (REP): R277-521. National Board Certification and Reimbursement.
Published: 10/01/2019
Effective: 11/08/2019

Environmental Quality
Drinking Water
No. 44020 (R&R): R309-400. Water System Rating Criteria.
Published: 09/15/2019
Effective: 11/08/2019

Health
Family Health and Preparedness, Emergency Medical Services
No. 43956 (AMD): R426-1. General Definitions.
Published: 09/01/2019
Effective: 11/06/2019

Human Resource Management
Administration
No. 44060 (AMD): R477-8. Working Conditions.
Published: 10/01/2019
Effective: 11/07/2019

Human Services
Child and Family Services
No. 44079 (AMD): R512-76. Expungement of DCFS Allegations.
Published: 10/01/2019
Effective: 11/07/2019

Public Safety
Criminal Investigations and Technical Services, Criminal Identification
No. 44054 (REP): R722-370. Firearm Safety Program.
Published: 10/01/2019
Effective: 11/07/2019

Tax Commission
Administration
No. 44061 (AMD): R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.
Published: 10/01/2019
Effective: 11/14/2019

Transportation
Administration
No. 44058 (NEW): R907-33. Department of Transportation Procurement Rules.
Published: 10/01/2019
Effective: 11/07/2019

End of the Notices of Rule Effective Dates Section