

UTAH STATE BULLETIN

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

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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

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Utah state bulletin.

Semimonthly.

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EDITOR'S NOTES

There was a typographical error in the publication of the notice of effective date for: Section R612-400-5, file number 44159, "Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund." The correct effective date should be 12/23/2019.

If you have any questions about the issues addressed in this editor's note, please contact the Office of Administrative Rules by telephone at (801) 957-7110, or by email at rulesonline@utah.gov

End of the Editor's Notes 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 January 01, 2020, 12:00 a.m., and January 15, 2020, 11:59 p.m. are included in this, the February 01, 2020, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 02, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through May 31, 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: Repeal		
Utah Admin. Code Ref (R no.):	R23-33	Filing No. 52492

Agency Information

1. Department:	Administrative Services	
Agency:	Facilities Construction and Management	
Room no.:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, Utah 84129-2128	
Mailing address:	PO Box 141160	
City, state, zip:	Salt Lake City, Utah 84114-1160	
Contact person(s):		
Name:	Phone:	Email:
Mike Kelley	801-957-7239	mkelley@agutah.gov

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

General Information

2. Rule or section catchline:
Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The purpose of this filing is to repeal this rule. This rule is no longer mandated nor necessary. Rule R23-33 provided a procedure for prioritization of capital improvement projects by the Utah State Building Board. This rule was rendered obsolete by Section 63A-5-228 effective May 14, 2019, which transferred responsibility for prioritization of capital improvement projects from the Utah State Building Board to the Utah Division of Facilities Construction and Management. The Utah State Building Board unanimously approved repeal of Rule R23-33 at its meeting on September 4, 2019.
4. Summary of the new rule or change:
Rule is being repealed.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs or savings to the state budget. Rule R23-33 provided a procedure for prioritization of capital improvement projects by the Utah State Building Board. Section 63A-5-228 effective May 14, 2019, transferred responsibility for prioritization of capital improvement projects from the Utah State Building Board to the Utah Division of Facilities Construction and Management.

B) Local governments:

There are no anticipated costs or savings to local governments.

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

There are no anticipated costs or savings to small businesses.

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

There are no anticipated costs or savings to non-small businesses.

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

There are no anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The chair of the Utah State Building Board, Joe Burgess, 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 anticipated fiscal impacts that this rule may have on businesses.

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

Joe Burgess, Chair of the Utah State Building Board

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 63G-3-201		
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mike Kelley, Assistant Attorney General	Date:	01/14/2020
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R23. Administrative Services, Facilities Construction and Management.**[R23-33. Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board.]****R23-33-1. Purpose.**

The purpose of this Rule R23-33 is to establish a prioritization and scoring process for capital improvements that occurs annually before the Building Board.

R23-33-2. Authority.

This Rule R23-33 is authorized under Subsection 63A-5-104(10) indicating that the Board may adopt a rule allocating Capital Improvements subject to terms in the statute. The Building Board has administrative rulemaking authority under Subsection 63A-5-103(2).

R23-33-3. Definitions.

- The following definitions shall apply to this Rule R23-33:
- (1) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.
 - (2) "Building Board Director" means the employee of the Department of Administrative Services that is assigned as an administrator to the Utah State Building Board and hereinafter referred to as the "BBD."
 - (3) Definitions provided in Utah Code Section 63A-5-104 shall apply to the terms used in this Rule R23-33.

R23-33-4. General Overview of Process.

The capital improvement prioritized scoring process consists of five steps as follows:

- (1) A Project Needs Request;
- (2) Preliminary Project Prioritization and Preliminary Scoring by the BBD;
- (3) Preliminary BBD Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, and the BBD;
- (4) Submitting the revised Scored List to Board and a Utah State Legislature subcommittee involved with State facility design and construction; and
- (5) Review and Final Approval by the Utah State Building Board of the list for submittal to the Utah Legislature.

NOTICES OF PROPOSED RULES

R23-33-5. Step One: Project Needs Request.

(1) Submission guidelines and formatting requirements shall be approved by the Board prior to submission by the BBD to the agencies and institutions.

(i) Submission guidelines include the Project Scoping Form which describes in detail the work that needs to be accomplished, statutory requirements, identification of hard and soft costs, submission deadlines and other requirements.

(ii) The guidelines shall also describe the priority classifications which are in the following ranked order of priority: 1-life safety; 2-critical; 3-necessary; and 4-programmatic, as well as the scoring criteria.

(2) Prior to June of each calendar year, the BBD shall notify agencies and institutions to begin developing their Project Needs Request which includes the agency or institution's prioritized list for the next fiscal year's funding cycles as well as the prioritized scoring process submission guidelines; all to be consistent with applicable law.

(3) The BBD may provide agencies and institutions with a list of existing Facility Condition Assessment Data ("FCA"), including Risk Management property number, life cycle related to the need, unique FCA project number, and the estimated cost. To the extent the BBD does not provide such information, the agency or institution is required to obtain the information from the FCA database maintained by DFCM and any supplemental information obtained by the agency or institution.

(4) The Project Needs Request, including the prioritization, shall be submitted by the agencies and institutions to the BBD no later than August 15th immediately following the BBD's notice referred to above.

R23-33-6. Step Two: Preliminary Project Prioritization and Preliminary Scoring by the BBD.

(1) The BBD shall review the agency or institution's Project Needs Request, including the prioritization and classification.

(2) The BBD shall provide a copy of the submittal to the State Building Energy Efficiency Program Director to determine if any listed projects qualify for energy savings components, energy improvements/developments or qualification for revolving loans.

(3) The BBD then compiles all the submittals from every agency and institution into one comprehensive list. The comprehensive list includes the classification codes. The BBD applies the prioritized scoring method to each of the submittals. The comprehensive list shall be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(4) The BBD shall notify the agency or institution of any concerns regarding the Project Needs Request.

(5) At any time, the BBD may initiate conversations and meetings with the agency or institution to obtain information, clarification or seek to reach an agreement on any concerns.

R23-33-7. Step Three: Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, BBD and the Board.

(1) The BBD shall distribute the BBD's preliminary master capital improvement list including categorization, prioritization and scoring, to the Division of Facilities Construction and Management as well as the agencies and institutions for review and comment.

(2) A Construction Budget Estimate (CBE) shall be prepared by the appropriate State employee responsible for preparing a CBE for the particular project using the CBE form provided by the BBD. The CBE shall be based on the Project Scoping Form provided by the BBD.

(3) Each completed CBE form and Project Scoping Form shall be submitted promptly to the BBD and no later than October 15th of the particular year.

(4) The BBD will review each CBE and Project Scoping Form. The BBD will prepare the preliminary scoring along with packet of prioritized capital improvement projects intended for the Board meeting in December. This preliminary scoring and packet shall be submitted by the BBD to the affected agencies or institutions. If there is any disagreement between the BBD and any particular agency or institution, the BBD and the particular agency or institution may endeavor to resolve this matter prior to the packet being sent to the Board. During any such resolution process between the BBD and an agency or institution, the BBD's preliminary scoring and packet may be modified.

(5) The resulting packet and scoring prepared by the BBD under subsection (4) of this Rule, shall be distributed to the Board members as well as the agencies and institutions at least seven days in advance of the December Board meeting.

(6) The Board meeting to review the BBD's capital improvement submittal shall be on or about December 15th of each year.

(7) At the December Board meeting, the Board shall consider input from the BBD, an affected agency or institution as well as interested persons as appropriate.

R23-33-8. Step Four: Submitting the Scored List to the Appropriate Subcommittee of the Utah State Legislature.

(1) At the January Board meeting, the Board shall make a final prioritization recommendation for submission to the appropriate subcommittee of the Utah Legislature. The recommendation must be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(2) The Board's list is submitted to the appropriate subcommittee of the Utah Legislature as required by law, no later than the January 15th following the January Board meeting.

R23-33-9. Step Five: Review and Final Approval by the Utah State Building Board.

After the consideration by the Utah Legislature, the Board will make its final approval of the capital improvements lists consistent with any direction from the Legislature.

KEY: building board, capital improvements, prioritization, scoring

Date of Enactment or Last Substantive Amendment: March 10, 2014

Notice of Continuation: March 6, 2019

Authorizing, and Implemented or Interpreted Law: 63A-5-103(2); 63A-5-104(10)]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R25-7 Ref (R no.):	Filing No. 52480
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Agency Information

1. Department:	Administrative Services
Agency:	Finance
Room no.:	Third Floor

Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 141031	
City, state, zip:	Salt Lake City, UT 84114-1031	
Contact person(s):		
Name:	Phone:	Email:
Cory Weeks	801-957-7713	cweeks@utah.gov

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

General Information**2. Rule or section catchline:**

Travel-Related Reimbursements for State Employees

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?:)

This amendment is necessary because the IRS announced a rate decrease in rates for private vehicle use from 58 cents per mile to 57 cents per mile. The Division of Finance (Division) has determined that the reimbursement rate for private vehicles should decrease to 57 cents per mile to avoid exceeding federal mileage reimbursements.

4. Summary of the new rule or change:

This rule decreases reimbursement rate for mileage on private vehicles. (EDITOR'S NOTE: A corresponding 120-day emergency filing for Rule R25-7 that is effective as of 01/07/2020 is under Filing No. 52476 in this issue, February 1, 2020, of the Bulletin.)

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel state employees will do.

B) Local governments:

Local governments have to comply with this rule, so there will potentially be a decrease in cost to local governments. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel local governments will do.

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

Because the change deals only with reimbursement rates for mileage for state employees, small businesses are not affected.

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

Because the change deals only with reimbursement rates for mileage for state employees, non-small businesses are not affected.

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*):

Individuals eligible for reimbursement will see a slight decrease in their mileage reimbursement amounts for travel in private vehicles.

F) Compliance costs for affected persons:

Because the amendment only changes mileage reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

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

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

I have reviewed the regulatory impact table, and there are no fiscal impacts associated with this rule change.
Tani Pack Downing, Executive Director.

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

I have reviewed these changes with the Division of Finance Director and believe these changes are warranted. Individuals may see a slight decrease in reimbursement amounts. However, the Division cannot determine exactly what the decrease will be as that depends on the amount of travel by individuals eligible for mileage reimbursement. This rule will have no impact on business.

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

Tani Pack Downing, Executive Director

Citation Information

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

Subsection 63G-3-601(3)	Section 107	63A-3-106	63A-3-
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Public Notice Information

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

A) Comments will be accepted 03/02/2020 until:

10. This rule change MAY become effective on: 03/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After

the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	John Reidhead, Division Director	Date:	01/07/2020
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R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

- (1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
- (2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

(3) Alcoholic Beverages are not reimbursable.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an

appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization", in the State's ESS Travel system or another system with equivalent controls and calculations.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, in the State's ESS Travel system, another system with equivalent controls and calculations or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$45.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$11.00
Lunch	\$14.00
Dinner	\$20.00
Total	\$45.00

(b) The daily travel meal allowance for out-of-state travel is \$50.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$13.00
Lunch	\$14.00
Dinner	\$23.00
Total	\$50.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$71 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-

state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$61 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$18, leaving a premium allowance for lunch and dinner of actual up to \$53.

(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$52.

(iii) If dinner is provided deduct \$34, leaving a premium allowance for breakfast and lunch of actual up to \$37.

Tier II Location

(i) If breakfast is provided deduct \$16, leaving a premium allowance for lunch and dinner of actual up to \$45.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$44.

(iii) If dinner is provided deduct \$28, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate for the location as of the date of travel.

(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59	2nd Quarter a.m. 6:00-11:59	3rd Quarter p.m. 12:00-5:59	4th Quarter p.m. 6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State \$45.00	\$34.00	\$20.00	\$0
Out-of-State \$50.00	\$37.00	\$23.00	\$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

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- (ii) Meals provided on airlines will not reduce the meal allowance.
- (c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4
The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals In-State \$0	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
\$11.00		\$25.00	\$45.00
\$0	\$13.00	\$27.00	\$50.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's farthest destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at or after 6:00 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$95.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$80.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$90.00 plus tax and mandatory fees
Ephraim	\$80.00 plus tax and mandatory fees
Farmington	\$90.00 plus tax and mandatory fees
Fillmore	\$80.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Hanksville	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$90.00 plus tax and mandatory fees
Layton	\$90.00 plus tax and mandatory fees
Logan	\$85.00 plus tax and mandatory fees
Mexican Hat	\$90.00 plus tax and mandatory fees
Moab/Green River	\$110.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$90.00 plus tax and mandatory fees
Panguitch	\$75.00 plus tax and mandatory fees
Park City/Midway	\$110 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	\$85.00 plus tax and mandatory fees

Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/ Hurricane/La Verkin	\$85.00 plus tax and mandatory fees
Torrey	\$90.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgment to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged

by the hotel. These instances will be audited 100% by the State Finance Post-Auditors for State Government travel.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5, in the State's ESS Travel system or another system with equivalent controls and calculations.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B, FI 51D, or ESS Travel.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidental.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

(a) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

NOTICES OF PROPOSED RULES

(d) Gratuities/Tips for ground transportation (taxi/shuttle/rideshare) will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities/Tips must be shown on an original receipt.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel for amounts of \$20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or [§8]57 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [§8]57 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(g) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(h) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(i) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at ~~\$58~~\$57 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

Date of Enactment or Last Substantive Amendment: [July 1, 2019]2020

Notice of Continuation: February 8, 2018

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R25-21	Filing No.
Ref (R no.):	52503	

Agency Information

1. Department:	Administrative Services	
Agency:	Finance	
Building:	Taylorsville State Office Building	
Street address:	4315 South 2700 West, Third Floor	
City, state:	Salt Lake City, UT 84129-2128	
Mailing address:	PO Box 141031	
City, state, zip:	Salt Lake City, UT 84114-1031	
Contact person(s):		
Name:	Phone:	Email:
John Reidhead	801-957-7734	jreidhead@utah.gov

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

General Information

2. Rule or section catchline:

Medical Cannabis Payment Provider Standard

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)

This rule is enacted under the authority of Subsection 26-61a-603(2)(a), which authorizes the Department of Administrative Services, and the Division of Finance (Division), to set standards that payment providers must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses.

4. Summary of the new rule or change:

This rule establishes the functional, technical, and other standards payment providers must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses. (EDITOR'S NOTE: A corresponding 120-day emergency filing for Rule R25-21 that is effective as of 01/27/2020 is under Filing No. 52515 in this issue, February 1, 2020, of the Bulletin.)

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

There are no anticipated costs to the state budget.

B) Local governments:

There are not anticipated costs to local governments.

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

The relevant data is unavailable because affected businesses will be able to choose among authorized payment providers and costs are unknown and may vary. Costs are not estimable. Products affected by this rule are optional for businesses affected. Marijuana-related businesses choosing a payment provider would have similar costs with or without this rule.

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

The relevant data is unavailable because affected businesses will be able to choose among authorized payment providers and costs are unknown and may vary. Costs are not estimable. Products affected by this rule are optional for businesses affected. Marijuana-related businesses choosing a payment provider would have similar costs with or without 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**):

This proposed rule applies only to participating payment providers for Utah cannabis-related businesses. There are not anticipated direct costs or savings to other persons. Costs incurred by Utah cannabis-related businesses will likely be passed on to their customers (indirect costs). However, the costs are not estimable because the relevant data necessary to determine how the costs will be allocated to customers is not available. The Division also expect customers would have similar costs passed on them with or without this rule.

F) Compliance costs for affected persons:

The costs to payment providers cannot reasonably be estimated because the relevant data necessary to determine how the costs will be allocated to customers is not available. The cost to the payment providers would depend on the type of establishment and service each provider offers.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

I have reviewed the regulatory impact table, and agree there are no estimable fiscal impacts associated with this rule due to the lack of relevant data. Tani Pack Downing.

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

There is not an estimable impact on businesses.

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

Tani Pack Downing, Executive Director

Citation Information

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

Subsection	26-	
	61a-603(2)(a)	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. 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 03/02/2020 until:

10. This rule change MAY 03/09/2020 **become effective on:**

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	John Reidhead,	Date:	01/15/2020
or designee,	Division Director		
and title:			

R25. Administrative Services, Finance.**R25-21. Medical Cannabis Payment Provider Standards.****R25-21-1. Purpose and Authority.**

(1) Purpose. This rule establishes the functional, technical and other standards a payment provider must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses.

(2) Authority. This rule is enacted under the authority of Section 26-61a-603(2)(a).

R25-21-2. Definitions.

Terms used in this rule are defined in Section 26-61a-102.

In addition:

(1) "Utah MRB" means any cannabis production establishment, medical cannabis pharmacy, or home delivery

medical cannabis pharmacy licensed within the State of Utah in accordance with the Utah Medical Cannabis Act.

(2) "Bank" means any federal or state chartered and regulated depository financial institution.

(3) "Bank of First Deposit" means the first Bank that receives funds from Utah MRB related transactions.

R25-21-3. Payment Provider Standards.

(1) Prerequisite to consideration of a Payment Provider under this rule, a Utah MRB must provide the Division of Finance and State Treasurer documentation associated with the Payment Provider in accordance with Subsection 26-61a-603(1).

(2) A Payment Provider must provide certification signed by an officer of the Bank of First Deposit acknowledging that the Payment Provider is facilitating cannabis-related transactions legal under Utah law on behalf of a Utah MRB.

(3) A Payment Provider must provide certification from the Bank of First Deposit that data transmitted to the bank is adequate and transparent for the following regulatory requirements:

(a) Certification as to Know Your Customer (KYC) compliance pursuant to the Federal USA Patriot Act;

(b) Certification as to compliance with Suspicious Activity Report (SAR) and Currency Transaction Report (CTR) filings pursuant to the Federal Bank Secrecy Act; and

(c) Certification as to due diligence pursuant to the Federal Department of Treasury, Financial Crimes Enforcement Network (FinCEN) guidance given in FIN-2014-G001, "BSA Expectations Regarding Marijuana-Related Businesses," Issued February 14, 2014.

(4) A Payment Provider must provide certification and supporting documentation that Automated Clearing House (ACH) transactions are compliant with National Automated Clearing House Association (NACHA) Rules and Operating Guidelines.

(5) The Payment Card Industry Data Security Standards (PCI-DSS) comprise the security framework the Division of Finance will use to evaluate information security of payment provider solutions. A Payment Provider must provide PCI-DSS assessments, as applicable, including:

(a) PA-DSS certification for devices with a signature from a Payment Application Qualified Security Assessor (PA-QSA); and

(b) PCI-DSS Report on Compliance with a signature from a Qualified Security Assessor (QSA).

(6) A Payment Provider facilitating cash transfers to a Utah MRB's Bank must:

(a) Certify that the Payment Provider supplies detailed records of cash transfers to Utah MRBs and their respective Banks;

(b) Provide written policies and procedures that demonstrate that the Payment Provider adequately protects the safety of Utah MRB employees and the Payment Provider's drivers; and

(c) Certify that the Payment Provider supplies data sufficient for Suspicious Activity Report (SAR) for cash transfers to Bank of First Deposit.

R25-21-4. Approved Payment Providers.

(1) A Payment Provider must submit evidence of compliance with Section R25-21-3 to the Department of Administrative Services, Division of Finance for consideration for approval and on an annual basis thereafter.

(2) A Payment Provider must notify the Division of Finance within 30 days of any changes in information reported for

NOTICES OF PROPOSED RULES

compliance to this rule. If required, time to cure non-compliance will be assigned by the Division of Finance upon notification.

(3) Failure to comply with paragraph (2) will result in automatic removal from the approved Payment Provider list.

(4) A Payment Provider that is removed from the approved Payment Provider list may appeal to the Director of the Division of Finance for reinstatement subject to administrative Rule R25-2.

(5) A list of approved Payment Providers is available at finance.utah.gov/cannabispaymentproviders.

KEY: marijuana, medical cannabis, payment provider

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 26-61a-603(2)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R33-26	Filing No.
Ref (R no.):		52485

Agency Information

1. Department: Administrative Services

Agency: Purchasing

Room no.: Third Floor

Building: Taylorsville State Office Building

Street address: 4315 S 2700 W

City, state: Salt Lake City, Utah 84129-2128

Mailing address: PO Box 141061

City, state, zip: Salt Lake City, Utah 84114-1061

Contact person(s):

Name: **Phone:** **Email:**

Christopher Hughes	801-957-7130	christopherhughes@utah.gov
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

State Surplus Property

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)

Subsection 63A-2-411(3) was changed by S.B. 204 (2019 General Session). This bill removed from statute specific mechanisms of disposing of surplus property of minimal value. Those mechanisms are now placed in the rule text. Division of Purchasing review also identified other needed changes.

4. Summary of the new rule or change:

This amendment removes an unnecessary definition and outlines disposition methods of surplus property.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs to the state budget. There may be a minimal savings to the state budget by terminating this rule for disposing of state surplus property with minimal value.

B) Local governments:

There are no anticipated costs to local governments. There may be a minimal savings to local governments by terminating the rule for disposing of state surplus property with minimal value.

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

There are no anticipated costs or savings to small businesses.

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

There are no anticipated costs or savings to non-small businesses.

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

There are no anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

There are no anticipated costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

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

I see no fiscal impact on businesses caused by this amendment.

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

Tani Downing, Executive Director

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

Title 63A, Chapter 2		
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an**

association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted 03/02/2020 until:

10. This rule change MAY become effective on:

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:	Christopher Hughes, Director	Date:	01/09/2020
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R33. Administrative Services, Purchasing and General Services.**R33-26. State Surplus Property.****R33-26-101. State-Owned Surplus Property – General.**

This rule sets forth policies and procedures which govern the acquisition and disposition of State-owned and federal surplus property items, and vehicles. It applies to all State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the State Surplus Property agency.

R33-26-102. Requirements.

Under the provisions of Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(2) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property and information technology equipment.

[——— (3) Information technology equipment.]

R33-26-103. Definitions.

All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

(1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(2) "All-terrain type II vehicle" means any other motor vehicle, not defined in Section 103 designed for or capable of travel

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over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(13) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(14) "Personal Watercraft" means a motorboat that is:

- (a) less than 16 feet in length;
- (b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(17)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

- (i) a travel trailer;
- (ii) a camping trailer;
- (iii) a motor home;
- (iv) a fifth wheel trailer; and
- (v) a van.

(18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(21)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

- (ii) not designed to operate in traffic; and
- (iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

- (i) farm tractors;
- (ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
- (iii) ditch-digging apparatus; and
- (iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(22) "State agency" means any executive branch department, division, or other agency of the state.

[~~(23) "State-owned surplus property item":~~

~~(a) means state owned property as defined in Section 63A-2-101.5 and Section R33-26-103 whether acquired by purchase, seizure, donation, or otherwise;~~

~~(i) that is no longer being used by the state or no longer usable by the state;~~

- ~~(ii) that is out of date;~~

~~(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;~~

- ~~(iv) whose useful life span has expired; or~~

~~(v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;~~

~~(b) includes:~~

~~(i) a motor vehicle as defined in Section R33-26-103;~~

- ~~(ii) equipment;~~

- ~~(iii) furniture;~~

- ~~(iv) information technology equipment; and~~

- ~~(v) supplies; and~~

~~(c) does not include:~~

- ~~(i) real property;~~

~~(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;~~

- ~~(iii) a firearm or ammunition; or~~

~~(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.]~~

[~~(24)~~(23) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

[~~(25)~~](24) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

[~~(26)~~](25) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

[~~(27)~~](26) "Vehicle" means:

- (a) all-terrain vehicle type I and II;
- (b) aircraft;
- (c) camper;
- (d) farm tractor;
- (e) motor boat;
- (f) motorcycle;
- (g) motor vehicle;
- (h) off highway vehicle;
- (i) personal watercraft;
- (j) pickup truck;
- (k) reconstructed vehicle;
- (l) recreational vehicle;
- (m) road tractor;
- (n) sailboat;
- (o) semitrailer;
- (p) special mobile equipment;
- (q) trailer;
- (r) travel trailer;
- (s) truck tractor;
- (t) vessel; and

[~~(28)~~](27) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-200. Disposition of State-Owned Surplus Property Items.

(1) The State surplus property program shall determine the appropriate method for disposing of state surplus property.~~[be administered by the Department of Administrative Services, Division of Purchasing and General Services.]~~

(2) When a state agency determines to dispose of state surplus property that is a non-vehicle item it shall, in order to comply with Subsection 63A-2-401(2), complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(3) Each state agency with state surplus property will be responsible for:

(i) Storing state surplus property on site until:

(A) picked up by the person to whom the item has been sold;
(B) disposed of or donated by the state agency; or
(C) picked up by State Surplus property program;

(ii) Assigning an employee of the agency to assist the public and State Surplus with the sale of the State-owned property; and

(iii) Developing internal policies regarding employees:

(A) assisting the public with lifting and transporting State-owned surplus property items; and

(B) transporting State-owned surplus property items with a minimal value to charities for donation.

(4) State Surplus property with a minimal value as described in 63A-2-411 may be disposed of by:

- (a) destroying the surplus property;
- (b) disposing of the surplus property as waste; or
- (c) donating the surplus property to:

- (i) a public entity;
- (ii) a charitable organization; or
- (iii) another person or entity approved by the director of state surplus.

(5) The State Surplus Property program is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.~~[Disposition of State owned surplus property items shall be through the following methods:~~

- (a) Online auction;
- (b) Live auction;
- (c) Pick up, sale, and disposal;
- (d) Disposal;
- (e) Destruction;
- (f) Direct sale to the public;
- (g) Donation to a public school or state administered program; or
- (h) Another method approved by the director of the divisions.

(3) State agencies shall complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(a) Completion of Form SP-1 meets the requirements set forth in Subsection 63A-2-401(7) for a state agency to declare State property as surplus.

- (i) Form SP-1 may be accessed at: surplus.utah.gov;
- (ii) The following information must be included on Form SP-1:

- (A) a minimum of two digital photographs for each State-owned surplus property item being listed for sale;
- (B) a brief description of the State-owned surplus property item detailing its condition;
- (C) an estimate of the State-owned surplus property item's value;
- (D) the location of the State-owned surplus property item; and

(E) the contact information of the person assigned by the state agency to assist the public with the transaction.

(4) Online auction shall be the primary method used for the disposition of non-vehicle State-owned surplus property items.

(a) Online auctions shall be administered by the State Surplus Property agency.

(b) Each state agency will be responsible for:

(i) Storing State-owned surplus property items on site until the online auction has been completed and each State-owned surplus property item is:

(A) picked up by the person to whom the item has been sold to via online auction;

(B) disposed of or donated by the state agency;

(C) picked up by the vendor under contract with the division; or

(D) picked up by a local vendor under contract with the state agency;

(ii) Assigning an employee of the agency to assist the public with the online auction including:

(A) answering questions about the State-owned surplus property item;

(B) providing directions;

(C) scheduling the pickup;

(D) other miscellaneous tasks; and

(iii) Developing internal policies regarding employees:

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- (A) assisting the public with lifting and transporting State-owned surplus property items;
- (B) transporting State-owned surplus property items with a minimal value of less than \$100 to charities for donation;
- (C) receiving State-owned surplus property items with a minimal value of less than \$100 as a donation by the state agency.
- (e) A state agency may seek an exception from the requirement to dispose of State-owned surplus property items through online auction in accordance with Subsection 63A-2-401(3).
- (i) State agencies that are granted an exception must:
- (A) complete Form SP-1 and transmit it to the State Surplus Property agency; and
- (B) coordinate with the State Surplus Property agency to schedule a date and time for State-owned surplus property items to be delivered.
- (ii) State agencies may contract with the State Surplus Property agency to have items identified in subsection (4)(e)(i) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.
- (iii) State agencies may contract with a vendor to have items identified in subsection (4)(e)(i) picked up and delivered to the State Surplus Property agency.
- (5) The State Surplus Property agency shall administer the disposition of State-owned surplus vehicles.
- (a) State-owned surplus vehicles may be sold at the agency location or delivered to the State Surplus Property agency for disposition.
- (6) State-owned surplus electronic data devices shall be disposed of in accordance with Rule R33-26-202.
- (7)(a) State-owned surplus property items with a minimal value may be disposed of as waste by a state agency in accordance with Subsection 63A-2-411.
- (b) State-owned surplus property items that do not appreciate in value that had an initial purchase price of less than \$100 or deemed to be valued at less than \$100 by the State Surplus Property agency:
- (i) may be disposed of as waste by a state agency by the means described in Subsection 63A-2-411(3); or
- (ii) may be packaged together and sold as a bundled sale.
- (8) The State Surplus Property agency is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.
- (9) State agencies that cannot or elect not to dispose of a surplus item having a minimal value of less than \$100 as waste in the trash, donate the item to a charity, or donate the item to an employee of the state agency, may contract with a vendor to dispose of the item, recycle the item, or repurpose the item.
- (a) State agencies may contract with the State Surplus Property agency to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.
- (b) State agencies may contract with a private sector vendor to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency.]

R33-26-201. Non-vehicle Disposition Procedures.

(1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a [department]-state agency determines that state-owned non-vehicle personal property is in excess of current needs, it will:

(a) transfer the state-owned, non-vehicle surplus property items directly to another [department or agency of the] state agency without involvement of the division; or

(b) notify the State Surplus Property agency that the agency has a State-owned surplus property item.

R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.

(1) For the purpose of this rule, Electronic Data Device means any informational technology device identified by the Department of Technology Services [an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

- (a) Computers;
- (b) Tablets (iPad, Surface Pro, Google Nexus, Samsung Galaxy, etc.);
- (c) Smart phones;
- (d) Personal Digital Assistants (PDAs);
- (e) Digital copiers and multifunction printers;
- (f) Flash drives and other portable data storage devices; and
- (g) Other similar devices.]

(2) Each State agency shall ensure that all surplus property that is considered an electronic data device is disposed of in accordance with the following procedures identified in this Rule. [The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means:

(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:

(A) the Executive Director of the Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and

(B) the State Surplus Property agency regarding the market value of the State-owned electronic data device.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State owned electronic data device has been destroyed to the point that State owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State owned electronic data device has been destroyed to the point that State owned data cannot be retrieved; or

(iii) Resale by the contractor of computers, digital copiers and multifunction printers that have had the hard drive destroyed.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State owned surplus electronic data communication devices.]

(3) [Subject to Subsections (1) and (2), except as it relates to a vehicle or federal surplus property items, the transfer of surplus property items from one state agency directly another does not require approval by the division, the director of the division, or any other person.] Prior to selling or transferring of an electronic data device, the following requirements shall be completed:

(A) remove, or cause to be removed, from the electronic data device any:

- (i) software owned or licensed by the agency as required by the software license agreement;
- (ii) information that is classified as protected, private, or controlled under the Title 63G, Chapter 2, Government Records Access and Management Act; and
- (iii) any other state-owned records and data.

(B) receive written confirmation from the Department of Technology Services that subsection (A) has been completed;

(C) submit an SP-1 to State Surplus Property agency with a description of the items to be included in the sale of the electronic data device including the make, model, serial number, specifications (if available), list of accessories, software; and

(D) Ensure in writing that the service contract is null and void to the agency or transferable to the purchaser.

(4) In coordination with the Department of Technology Services, the State Surplus program may decide on limitations on the selling or transferring of electronic data devices.

(5) Electronic Data devices that not are sold or transferred must be disposed of in accordance with the Department of Technology Services.

R33-26-204. Federal Surplus Property.

(1) Federal surplus property items are not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Title 63A, Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:

- (a) has purchasing authority;
- (b) has maintenance authority;
- (c) has disposition or signature authority;
- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) may be perceived to be a related party using other criteria which may prohibit independence.

R33-26-206. Priorities.

(1) Public agencies are given priority for the purchase of State-owned surplus property items.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by Surplus Property.

(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:

- (a) state agencies;
- (b) state universities, colleges, and community colleges;
- (c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;
- (d) other tax-supported educational entities; then
- (e) non-profit health and educational institutions.

(4) State-owned surplus property items that are not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

- (a) the cost to the State;
- (b) the potential liability to the State;
- (c) the overall best interest of the State.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all State and federal surplus property items.

(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

(1) Reimbursement to state agencies from the sale of their surplus property items will be made through the Division of Finance via interagency transfers or warrant requests. [vehicles and non vehicle items will be made through the Division of Finance via interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non vehicle items. In all cases property will be priced to sell for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.]

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(2) The State Surplus Property program is authorized to charge a rate for the services provided to an agency. [Payment for vehicles, non vehicle items, information technology equipment, federal surplus property, and personal handheld devices shall be as follows:

(a) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$100. Two party checks shall not be accepted;

(b) Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

- (i) the cost to the State;
- (ii) the potential liability to the State; and
- (iii) the overall best interest of the State.

(3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds".

(a) In the event that a check is returned to the division for "insufficient funds," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) Debts for which payments have not been received in full within the 15 day period referred to above shall be assigned to the Office of State Debt Collection in accordance with statute.]

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Title 63G, Chapter 4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response needs to be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services.

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate

Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions

Date of Enactment or Last Substantive Amendment: [October 3, 2017]2020

Notice of Continuation: July 8, 2019

Authorizing, and Implemented or Interpreted Law: 63A-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R156-69	Filing No.
Ref (R no.):		52481

Agency Information

1. Department:	Commerce	
Agency:	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:

Dentist and Dental Hygienist Practice Act Rule

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The Utah Dentists and Dental Hygienists Licensing Board (Board) proposes these amendments that they find necessary to improve patient care and safety.

4. Summary of the new rule or change:

In Section R156-69-102, the section is amended to update the names of the regional dental clinical exams that are accepted to include all five of the regional examinations. This will improve portability as students who take regional exams in other areas of the United States will be able to practice in Utah. This change also

complies with the Legislative change enacted by H.B. 200 during the 2018 General Session. These proposed amendments also update the definitions for the levels of analgesia and anesthesia used in the practice of dentistry. The changes are made in accordance with the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and dental students published by the ADA House of Delegates (ADA Teaching Guidelines) and the ADA Guidelines for the Use of Sedation and Anesthesia by Dentist adopted October 2016 by the ADA House of Delegates (ADA Use Guidelines). These amendments define the levels of analgesia and anesthesia that dentists are permitted to use, to include local anesthesia, minimal sedation using nitrous oxide, minimal sedation with the administration of a single enteral medication, moderate sedation, deep sedation, and general anesthesia.

In Sections R156-69-201, R156-69-202, and R156-69-203, these proposed amendments clarify license classifications requirements in accordance with the new definitions in Section R156-69-102 and the updated ADA Teaching Guidelines and ADA Use Guidelines.

In Section R156-69-204, these proposed amendments update the qualification requirements for local anesthesia permits for dental hygienists and the regional clinical exams that are accepted in accordance with H.B. 200 (2018). These changes also support licensure mobility by accepting all five of the available regional exams.

In Section R156-69-302b, these proposed amendments define the dental regional clinical exams accepted for licensure in accordance with H.B. 200 (2018).

In Section R156-69-302c, these proposed amendments define the dental hygienist regional clinical exams accepted for licensure in accordance with H.B. 200 (2018).

In Section R156-69-304a, these proposed amendments define the continuing education requirements for anesthesia permit holders who provide minimal sedation using an enteral drug, moderate and deep sedation. These amendments also detail that volunteer service providing direct patient care services in a qualified location as defined in Section 58-13-3 is accepted for up to 15% of the required continuing education at a ratio of four hours of volunteer service for one hour of continuing education.

In Section R156-69-502, these proposed amendments define as unprofessional conduct failing to follow certain requirements for observation, discharge, and documentation of patients who have received sedation.

In Section R156-69-601, these amendments establish the scope of practice for each classification of anesthesia and analgesia permits in accordance with the ADA Teaching Guidelines; this updates the rule from the 2007 edition to the 2016 edition. Requirements are

NOTICES OF PROPOSED RULES

established for monitoring of patients while being given and recovering from pain control, sedation, and anesthesia to reduce the chance of an adverse outcome, in accordance with the ADA Use Guidelines. Clarification is also added regarding the required training for a dentist who practices facial cosmetic dentistry.

In Section R156-69-602, these amendments make nonsubstantive formatting changes for clarity.

In Section R156-69-603, these amendments clarify the standards regulating unlicensed individuals as dental assistants working under the direct supervision of a dentist.

In Section R156-69-604, this section is amended to correct a reference to an exemption for dental assistants in Section 58-54-306.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These amendments will provide greater licensure portability for applicants who may wish to practice in Utah, and will also update the anesthesia and sedation standards to be in accordance with national standards. None of these amendments are expected to impact state government practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division of Occupational and Professional Licensing (Division) does not expect any state agencies that may be acting as employers of licensed individuals engaging in the practice of dentistry or dental hygiene to experience any measurable fiscal impacts. Accordingly, the Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures beyond a minimal cost to the Division of approximately \$75 to disseminate this rule once the proposed amendments are made effective.

B) Local governments:

The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures. None of these amendments are expected to impact local governments' practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed individuals engaging in the practice of dentistry or dental hygiene to experience any measurable fiscal impacts.

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

Utah dentists and dental hygienists primarily work in small businesses as owners or partners. There are approximately 1,707 small businesses involved in

providing dental services (NACIS 621210). The Utah Department of Workforce Services firm finder data reports 1,712 total businesses involved in NACIS Code 621210 Offices of Dentist. Of these all but five employ less than 50 people. Workforce Services data indicates approximately 30% of offices of dentist have less than four employees, and another 30% have less than 20 employees. These amendments update the definitions of sedation to be in accordance with the new 2016 ADA Teaching Guidelines and ADA Use Guidelines, as revised from the October 2007 standard. Some of these small businesses may need to purchase or update equipment in order to practice in accordance with these updated guidelines; however, the requirements would only affect those small businesses doing moderate sedation or general anesthesia, and for these small businesses the equipment used for monitoring of patient oxygenation, ventilation, and circulation is already required under professional standards and as part of H.B. 142 passed in the 2017 General Session, Administration of Anesthesia Amendments, in Subsection 58-69-502.5. Accordingly, no impact is expected for small business over and above any fiscal impact described in the fiscal note for the legislation.

See <https://le.utah.gov/~2017/bills/static/HB0142.html>.

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

Utah dentists and dental hygienists primarily work in businesses as owners or partners. There are approximately five non-small businesses involved in providing dental services (NACIS 621210). These amendments update the definitions of sedation to be in accordance with the new 2016 ADA Teaching Guidelines and ADA Use Guidelines, as revised from the October 2007 standard. Some of these non-small businesses may need to purchase or update equipment in order to practice in accordance with these updated guidelines; however, the requirements would only affect those non-small businesses doing moderate sedation or general anesthesia, and for these non-small businesses the equipment used for monitoring of patient oxygenation, ventilation, and circulation is already required under professional standards and as part of H.B. 142 (2017), Administration of Anesthesia Amendments, in Subsection 58-69-502.5. Accordingly, no impact is expected for non-small business over and above any fiscal impact described in the fiscal note for the legislation.

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 3,047 licensed dentists in Utah and 3,244 licensed dental hygienists. Utah dentists and dental hygienists primarily work in small businesses as owners or partners. As described above for small businesses and non-small businesses, no additional fiscal impact is

expected to these affected persons from these proposed amendments. These proposed amendments will also allow potential applicants for licensure greater portability in licensing by allowing them to take any of the nationally recognized regional competency examinations. Although these persons are expected to receive a fiscal benefit from such portability, the exact impact cannot be estimated as the relevant data is not available.

F) Compliance costs for affected persons:

These amendments are not expected to impose any compliance costs on affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$75	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$75	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(75)	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director 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:

There are eleven sections affected by the proposed amendments to Rule R156-69 Dentist and Dental Hygienist Practice Act Rules. These changes include updates to the definitions section for the names of the regional dental clinical exams to comply with H.B. 200 (2018). These amendments update the definitions of sedation to be in accordance with the new 2016 ADA Teaching Guidelines and ADA Use Guidelines. These proposed amendments define the continuing education requirements for anesthesia permit holders and the administration of analgesia pain medications. There is a definition for unprofessional conduct for failing to follow certain requirements for observation, discharge, and documentation of patients who have received sedation. Finally, there are rule amendments for dentists who practices facial cosmetic dentistry. Some amendments are nonsubstantive formatting changes to add clarity.

Small Businesses: The proposed amendments will regulate Utah dentists and dental hygienists working in small business practices. There are approximately 1,707 small businesses involved in providing dental services (NACIS 621210) according to Department of Workforce Services. Workforce Services data indicates approximately 30% of offices of dentists have less than four employees, and another 30% have less than 20 employees. Some practices may need to purchase or update equipment to be in compliance with updated ADA guidelines that use moderate sedation or general anesthesia where equipment used for monitoring of patient oxygenation, ventilation, and circulation is required under professional standards and as part of H.B. 142 (2017), Administration of Anesthesia Amendments in Section 58-69-502.5. Accordingly, no impact is expected for small businesses over and above any fiscal impact described in the fiscal note for the legislation as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses: Utah dentists and dental hygienists primarily work in small business practices and the impact on non-small dental practices will likely be minor. The Utah Department of Workforce Services firm finder data reports 1,712 total businesses involved in NACIS Code 621210 Office of Dentist with all but five being a small business. All practices in compliance with current professional standards, H.B. 142 (2017), and Section 58-69-502.5 should likely negate any costs by the proposed amendments since these have parallel requirements. These 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 as the 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

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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 58-69-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

First Incorporation	
Official Title of Materials Incorporated (from title page)	Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students
Publisher	American Dental Association (ADA)
Issue, or version	October 2016

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)	Guidelines for the Use of Sedation and General Anesthesia by Dentists
Publisher	American Dental Association (ADA)
Issue, or version	October 2016

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 03/02/2020 until:

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

On:	At:	At:
02/13/2020	9:00 AM	Heber Wells Bldg, 160 East 300 South, Conference Room 402 (fourth floor), Salt Lake City, Utah

10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark Steinagel, Division Director	Date:	01/08/2020
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R156. Commerce, Occupational and Professional Licensing.

R156-69. Dentist and Dental Hygienist Practice Act Rule.

R156-69-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 69, as used in Title 58, Chapters 1 and 69 or this rule:

(1) "ACLS" means Advanced Cardiac Life Support.

(2) "ADA" means the American Dental Association.

(3) "ADA CERP" means American Dental Association Continuing Education Recognition Program.

(4) "ADA Teaching Guidelines" means the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students published by the American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

(5) "ADA Use Guidelines", means the Guidelines for the Use of Sedation and General Anesthesia by Dentists published by the American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

(6) "ADEX" means American Board of Dental Examiners.

([4]7) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:

(a) business names;

(b) business signs;

(c) door or window lettering;

(d) business cards;

(e) letterhead;

(f) business announcements;

(g) flyers;

(h) mailers;

(i) promotions;

(j) advertisements;

(k) radio or television commercials;

(l) listings in printed or online telephone directories; or

(m) any other type of advertisement or promotional communication.

(8) "Analgesia" means the same as defined in the ADA Use Guidelines.

(9) "Anesthesiology" means the science of administration of anesthetics and the condition of the patient while under anesthesia.

[(5) "BCLS" means Basic Cardiac Life Support.]

([6]10) "ADHA" means the American Dental Hygienists' Association.

(11) "BCLS" means Basic Cardiac Life Support.

(12) "BLS" means Basic Life Support.

(13) "CDCA" means Commission on Dental Competency Assessments.

(14) "CITA" means Council of Interstate Testing Agencies, Inc.

(15) "CDEL" means the Council on Dental Education and Licensure.

([7]16) "CPR" means cardiopulmonary resuscitation.

([8]17) "CRDTS" means the Central Regional Dental Testing Service, Inc.

(18) "CODA" means the Commission on Dental Accreditation.

([9]19) "Competency" means displaying special skill or knowledge derived from training and experience.[

(10) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non pharmacologic method, or a combination thereof.]

([4+]20) "DANB" means the Dental Assisting National Board, Inc.

([4+]21) "Deep sedation" means the same as defined in the ADA Use Guidelines[a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non pharmacologic method, or combination thereof].

(22) "Discharge criteria" means the minimum requirements for a patient to be safely discharged from the care of a dentist.

([4+]23) "General anesthesia" means the same as defined in the ADA Use Guidelines[a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non pharmacologic method or a combination thereof].

(14) "NERP" means Northeast Regional Board of Dental Examiners, Inc].

(24) "Local anesthesia" means the same as defined in the ADA Use Guidelines.

(25) Maximum recommended dose (MRD) is the maximum FDA recommended dose of a drug, as printed in FDA approved labeling for unmonitored home use.

(26) "Minimal sedation" means the same as defined in the ADA Use Guidelines.

(27) "Moderate sedation" means the same as defined in the ADA Use Guidelines.

([4+]28) "PALS" means Pediatric Advanced Life Support.

([4+]29) "Practice of dentistry" in regard to administering sedation or anesthesia is further defined as follows:

(a) a Class [4+]A permit allows [for]administration of, or supervision of the administration of, local anesthesia in compliance with the ADA Use Guidelines,[which is the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;]

(b) a Class [4+]B permit allows [for]administration of, or supervision of the administration of, minimal sedation [which is a

minimally depressed level of consciousness]induced by nitrous oxide in compliance with the ADA Use Guidelines[,] or by a pharmacological method, or by both, that retains the patient's ability to independently and consciously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected;]

(c) a Class C permit allows administration of minimal sedation via nitrous oxide/oxygen with or without the administration of a single enteral drug, in compliance with the ADA Use Guidelines.

([e+]d) a Class [III]D permit allows [for]administration of, or supervision of the administration of, moderate sedation via any route of administration, in compliance with the ADA Use Guidelines,[in which a drug induced depression of consciousness occurs during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient's airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and]

([e+]e) a Class [IV]E permit allows [for]administration of, or supervision of the administration of, deep sedation and general anesthesia in compliance with the ADA Use Guidelines,[in which a drug induced depression of consciousness occurs from which a patient cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. A patient may require assistance in maintaining an airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.]

([4+]30) "Prominent disclaimer" means a disclaimer as described in and as required by Subsection R156-69-502(2)([i]b) that:

(a) if in writing, is in the same size of lettering as the largest lettering otherwise contained in an advertisement, publication, or other communication in which the disclaimer appears; or

(b) if not in writing, is in the same volume and speed as the slowest speed and highest volume otherwise included in a radio or television commercial or other oral advertisement or promotion in which the disclaimer appears.

(31) "Route of administration" means the technique of administering agents, and includes the following, as defined in the ADA Use Guidelines:

- (a) enteral;
- (b) parenteral;
- (c) transdermal;
- (d) transmucosal; and
- (e) inhalation.

([4+]32) "Specialty area" means an area of dentistry in which the dentist has completed a specialty post-doctoral program in a specialty area of dentistry consisting of at least two full time years and which is accredited by an accreditation agency that is recognized by the U.S. Department of Education.[proposed in a formal application by a sponsoring organization to the Council on Dental Education and Licensure and formally approved by the ADA as meeting the "Requirements for Recognition of Dental Specialists". Specialty areas include the following:

- (a) orthodontics;
- (b) oral and maxillofacial surgery;
- (c) oral and maxillofacial pathology;
- (d) pediatric dentistry;

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- (e) periodontics;
(f) endodontics;
(g) prosthodontics;
(h) dental public health; and
(i) oral and maxillofacial radiology.]
- ([19]33) "SRTA" means Southern Regional Testing Agency, Inc.
- ([20]34) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.
- ([21]35) "UDA" means Utah Dental Association.
- ([22]36) "UDHA" means Utah Dental Hygienists' Association.
- ([23]37) "WREB" means the Western Regional Examining Board.

R156-69-201. Classifications of Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:

- (1) class [I]A permit;
(2) class [II]B permit;
(3) class C permit;
([3]4) class [III]D permit; [and] or
([4]5) class [IV]E permit.

R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for dentist anesthesia and analgesia permits are:

- (1) for a class [I]A permit:
 (a) current licensure as a dentist in Utah; and
 (b) documentation of current CPR or BCLS/BLS certification;
- (2) for a class [II]B permit:
 (a) [current licensure as a dentist in Utah;
 (b) documentation of] current BCLS/BLS certification; and
- ([e]b) [evidence of successful] completion of training in the administration of nitrous oxide [and pharmacological methods of conscious sedation] that:
 (i) conforms to the ADA Teaching Guidelines[for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, which is incorporated by reference]; or
 (ii) is the substantial equivalent of [Subsection (2)(e)(i)] the ADA Teaching Guidelines provided in a continuing education format [offered] by an [American Dental Association]ADA accredited school;[and
 (d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);]
 (3) for a class C permit compliance with Subsections (1) and (2) above:
 (a) evidence of successful completion of training in pharmacological methods of minimal sedation that:
 (i) conforms to the ADA Teaching Guidelines; or
 (ii) is the substantial equivalent of the ADA Teaching Guidelines provided in a continuing education format by an ADA accredited school;

- (b) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) registration in good standing;
 ([3]4) for a class [III]D permit:
 (a) compliance with Subsection[s] [(1)(a) and (2)](3)(b) above;
 (b) [evidence of] current [Advanced Cardiac Life Support] ACLS[] or PALS certification; and
 (c) [evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;
 (d) evidence of successful completion of:
 (i) a comprehensive predoctoral or post[-]doctoral training in the administration of [conscious]moderate sedation that conforms to the ADA Teaching Guidelines[for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007,] including a letter from the course director documenting competency in performing conscious sedation; and
 (B) 60 hours of didactic education in sedation and successful completion of 20 cases; or
 (ii) the substantial equivalent of Subsection [(3)(d)](4)(c)(i) provided in a continuing education format [offered] by an [American Dental Association]ADA accredited school;[and
 (e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and]
 ([4]5) for a class [IV]E permit:
 (a) compliance with Subsections [(1), (2), and (3)](4)(a) and (b) above;
 (b) [evidence of current ACLS certification]if treating pediatric patients, current PALS certification;
 (c) [evidence of having successfully completed] completion of advanced training in the administration of general anesthesia and deep sedation, consisting of [not less than]at least one year in a program which conforms to the ADA Teaching Guidelines[for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and] including a letter from the course director documenting competency in performing general anesthesia and deep sedation[;
 (d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and
 (e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).]

R156-69-203. Classification of Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of dental hygienist with local anesthesia.

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a dental hygienist with local anesthesia permit are the following:

- (1)(a) current Utah licensure as a dental hygienist; or
 (b) documentation of meeting all Utah requirements for licensure as a dental hygienist;

(2) [successful] completion of a program of training in the administration of local [~~anesthetics~~] anesthesia, including nitrous oxide, that:

- (a)(i) is accredited by the CODA[Commission on Dental Accreditation of the ADA]; or
- (ii) is the substantial equivalent of Subsection (2)(a)(i) provided in a continuing education format [offered] by an [American Dental Association]ADA accredited school; and
- (b) documentation of successful completion of the program by a letter from the program director, or equivalent; and
- (3)(a) a passing score on the WREB, [NERB,]CDCA, or SRTA[, or CRDTS] written anesthesia examination; or
- (b) [documentation of having] a current, active in good standing license to administer local anesthesia in another state in the United States; and
- (4) [documentation of] current CPR or BCLS/BLS certification.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

In accordance with Subsections 58-69-302(1)(f) and (g), the examination requirements for licensure as a dentist include the periodontics, endodontics, operative, class 2 restoration, class 3 restoration, and prosthodontics sections and are established as the following:

- (1) the WREB examination with a passing score as established by the WREB;
- (2) the [NERB]CDCA examination with a passing score as established by the [NERB]CDCA;
- (3) the SRTA examination with a passing score as established by the SRTA;[or]
- (4) the CRDTS examination with a passing score as established by the CRDTS; or
- (5) the CITA examination with a passing score as established by the CITA.

R156-69-304a. Continuing Education - Dentist and Dental Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as [the following] follows:

(1) All licensed dentists and dental hygienists shall complete at least 30 hours of qualified continuing professional education during each two[-]year licensure period[of licensure], to include:

- (a) for class C anesthesia permit holders, at least two hours of CPE specific to the administration of enteral anesthesia/pharmacology;
- (b) for class D anesthesia permit holders:
 - (i) at least four anesthesia-specific CPE didactic hours; and
 - (ii) attestation of successful completion of at least ten sedation cases; and
- (c) for class E anesthesia permit holders:
 - (i) at least eight anesthesia-specific CPE didactic hours; and
 - (ii) attestation of successful completion of at least 30 sedation cases.

(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two[-]year period [will]shall be prorated from the date of licensure.

(3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide dental and dental hygiene continuing education; and

(c) have a method of verification of attendance and completion.

(4) Credit for continuing education shall be recognized [in accordance with the following] as follows:

(a) unlimited hours [shall be recognized] for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

(i) a government agency, including the Division of Occupational and Professional Licensing;

(ii) recognized universities and colleges, or an accredited dental, dental hygiene, or dental postgraduate program;

(iii) professional associations, societies, and organizations representing a licensed profession whose program objectives relate to the practice of dentistry and dental hygiene; or

(iv) the ADA or any subgroup thereof, the ADHA or any subgroup thereof, [an accredited dental, dental hygiene or dental postgraduate program, a government agency,] a recognized health care professional association or a peer study club;

(b) a maximum of ten hours per two[-]year period may be recognized for teaching continuing education relevant to dentistry and dental hygiene;

(c) a maximum of 15 hours per two[-]year period may be recognized for continuing education that is provided via Internet or through home study which provides an examination and a completion certificate;[

(d) a maximum of six hours per two year period may be recognized for continuing education provided by the Division of Occupational and Professional Licensing; and]

(e)d) a maximum of three hours per two-year period may be recognized for continuing education[qualified continuing professional education may include up to three hours] in practice and office management.

(5) A licensee may fulfill up to 15% of the licensee's continuing professional education requirement by providing direct patient care volunteer services at a qualified location, in accordance with Section 58-13-3. For every four documented hours of such volunteer services, the licensee may earn one hour of continuing education.[If properly documented that a licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.]

(6) Hours for recertification in CPR, BCLS, ACLS, and PALS [do]may not count as continuing education.

(7) A licensee shall [be responsible for] maintain[ing] competent records of the licensee's completed qualified continuing professional education for a period of four years after close of the two[-]year licensure period[to which the records pertain]. It is the responsibility of the licensee to [maintain such information with respect to qualified continuing professional education to] demonstrate that their continuing professional education[is] meets the requirements [under]of this section.

NOTICES OF PROPOSED RULES

(8) The Division may defer or waive continuing professional education requirements for a licensee as provided in Section R156-1-308d.

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) [failing to provide continuous in-operatory observation by a trained dental patient care staff member] for any patient under any level of sedation, including nitrous oxide administration;]

(a) failing to provide continuous in-operatory observation by a trained dental patient care staff member until the patient continuously and independently maintains their airway and may be safely discharged; or

(b) failing to record the discharge time and the person discharging the patient in the patient's records;

(2) advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area unless:

([i][a]) each dentist has successfully completed an advanced educational program accredited by the ADA's Commission on Dental Accreditation (or its equivalent if completed prior to 1967) of two or more years in length, as specified by the Council on Dental Education and Licensure;

([i][b]) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group includes a prominent disclaimer that the dentist or dentists performing services are licensed as general dentists or that the specialty services will be provided by a general dentist;

([i][c]) the advertisement or other method of holding oneself out to the public as a dentist or dental group that practices in a specialty area includes a prominent disclaimer that the dentist or dentists performing services is a specialist, but not qualified as a specialist in the specialty area being advertised; or

([i][d]) otherwise advertising in a specialty area by representing that a dentist has attained any education, training or certification in the specialty area when the dentist has not met the criteria;

(3) advertising in any form that is misleading, deceptive, or false; including the display of any credential, education, or training that is inaccurate, or the making of any unsubstantiated claim of superiority in training, skill, experience, or any other quantifiable aspect;

(4) prescribing treatments and medications outside the scope of dentistry;

(5) prescribing for oneself any Schedule II or III controlled substance;

(6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(7)(a) failing to personally maintain current CPR, [or] BCLS/BLS, ACLS, or PALS certification as required by the licensee's anesthesia permit; or

(b) [or] employing patient care staff who fail to maintain current CPR or BCLS/BLS certification;

(8) providing consulting or other dental services under anonymity;

(9) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for the purpose of obtaining payment;

(b) reporting charges for services not rendered;

(c) incorrectly reporting services rendered for the purpose of obtaining payment;

(d) generally representing a charge to a third party that is different from that charged to the patient;

(10) failing to establish and maintain appropriate dental records;

(11) failing to maintain patient records for a period of seven years;

(12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies regardless of the payment status of the services reflected in the record; and

(13) failing to submit a complete report to the Division within 30 calendar days concerning an incident, in which any anesthetic or sedative drug was administered to any patient, which resulted in, either directly or indirectly, the death or adverse event resulting in patient admission to a hospital; and

(14) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19.

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

(1) A dentist with a class [H]A permit[:

(a) may administer, or supervise the administration of, [any legal form of non drug induced conscious sedation or drug induced conscious sedation except:] minimal sedation using local anesthesia in compliance with the ADA Use Guidelines.[

(i) the administration of inhalation agents including nitrous oxide; and

(ii) the administration of any drug for sedation by any parenteral route; and

(b) shall maintain and ensure that all patient care staff maintain current CPR certification.]

(2) A dentist with a class [H]B permit:

(a) may exercise all of the privileges of a Class A permit; and

(b) administer, or supervise the administration of, nitrous oxide induced minimal[conscious] sedation in compliance with the ADA Use Guidelines.[addition to the privileges granted to one holding a Class I permit; and

(b) shall ensure that:

(i) every patient under nitrous oxide administration is under continuous in-operatory observation by a member of the dental patient care staff;

(ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;

(iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;

(iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and

(v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail safe system.]

(3) A dentist with a class [H]C permit:

- (a) may exercise all of the privileges of a Class B permit; and
- (b) may administer, or supervise the administration of minimal sedation via nitrous oxide/oxygen with or without the administration of a single enteral drug in compliance with the ADA Use Guidelines. [parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and
- (b) shall ensure that:
- (i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;
- (ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;
- (iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, and resuscitation medications;
- (iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;
- (v) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and
- (vi) a minimum of two persons, with one person constantly monitoring the patient, are present during the administration of parenteral conscious sedation as follows:
- (A) an operating permittee dentist and a BCCLS certified assistant trained and qualified to monitor appropriate and required physiologic parameters;
- (B) an operating dentist and a permittee dentist; or
- (C) an operating permittee dentist and another licensed professional qualified to administer this class of anesthesia.]
- (4) A dentist with a class D permit:
- (a) may exercise all of the privileges of a Class C permit;
- (b) may administer, or supervise the administration of moderate sedation in compliance with the ADA Use Guidelines; and
- (c) shall comply with Section 58-69-502.5 if administering sedation or anesthesia intravenously in an outpatient setting that is not an emergency department.
- (4)(5) A dentist with a class [HV]E permit[§]:
- (a) may exercise all of the privileges of a Class D permit;
- (b) may administer, or supervise the administration of general anesthesia or deep sedation in compliance with the ADA Use Guidelines; and
- (c) shall comply with Section 58-69-502.5 if administering sedation or anesthesia intravenously in an outpatient setting that is not an emergency department. [addition to the privileges granted one holding a class I, II and III permit; and
- (b) shall ensure that:
- (i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;
- (ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;
- (iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

- (iv) three qualified and appropriately trained individuals are present during the administration of general anesthesia or deep sedation as follows:
- (A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;
- (B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or
- (C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.
- (5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the Board within 30 days.]
- (6) A dentist who practices facial cosmetic dentistry utilizing the neurotoxin clostridium botulinum or injectable dermal fillers shall demonstrate competency by completing a minimum of eight hours of PACE or CERP training, which shall include a hands-on component.
- R156-69-602. Practice of Dental Hygiene.**
- In accordance with Subsection 58-69-102([7]6)(a)(ix), other practices of dental hygiene include performing:
- (1) laser bleaching; and
- (2) laser periodontal debridement.
- R156-69-603. Use of Unlicensed Individuals as Dental Assistants.**
- In accordance with Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual shall not, under any circumstance:
- (1) render definitive treatment diagnosis;
- (2) place, condense, carve, finish or polish restorative materials, or perform final cementation;
- (3) cut hard or soft tissue or extract teeth;
- (4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;
- (5) initially introduce nitrous oxide and oxygen to a patient for the purpose of establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist after a baseline percentage and flow rate suitable for the patient is established and documented by a licensed dentist holding the appropriate permit;
- (6) remove bonded materials from the teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity except to polish teeth coronally with a rubber cup;
- (7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, including electronic imaging, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;
- (8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance which is worn in the mouth;
- (9) perform sub-gingival instrumentation;
- (10) render decisions concerning the use of drugs, their dosage or prescription;
- (11) expose radiographs without meeting the following criteria:
- (a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; or

NOTICES OF PROPOSED RULES

- (b) passing one of the following examinations:
 - (i) the DANB Radiation Health and Safety Examination (RHS); or
 - (ii) a radiology exam approved by the Board that meets the criteria established in Section R156-69-604;[~~or~~]
 - (12) work without a current CPR or BCLS certification;
or
 - (13) provide injections of any substance.

R156-69-604. Radiology Course for Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803 and Subsection 58-54-[4.3]306(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

- (1) orientation to radiation technology;
- (2) terminology;
- (3) radiographic dental anatomy and pathology (cursory);
- (4) radiation physics (basic);
- (5) radiation protection to patient and operator;
- (6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
- (7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
- (8) intraoral and extraoral radiographic techniques;
- (9) processing techniques including proper disposal of chemicals;[~~and~~]
- (10) infection control in dental radiology;and
- (11) use of portable and handheld x-ray devices.

KEY: licensing, dentists, dental hygienists

Date of Enactment or Last Substantive Amendment:

[December 22, 2015]2020

Notice of Continuation: January 21, 2016

Authorizing, and Implemented or Interpreted Law: 58-69-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R277-100
Ref (R no.):	52493

Agency Information

1. Department:	Utah State Board of Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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:

Definitions for Utah State Board of Education (Board) Rules

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This rule is being amended to include a definition of the term "suspension."

4. Summary of the new rule or change:

The amendments have added a definition for "suspension" in Subsection R277-100-2(30).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule amendment is not expected to have fiscal impact on state government revenues or expenditures. It adds a definition of the term "suspension" to provide local education agencies (LEAs) with greater clarity during the classifying and reporting of school suspensions. This rule amendment is not expected to create significant costs or savings for the Board or LEAs.

B) Local governments:

This rule amendment is not expected to have fiscal impact on local governments' revenues or expenditures. It adds a definition of the term "suspension" to provide LEAs with greater clarity during the classifying and reporting of school suspensions. This rule amendment is not expected to create significant costs or savings for the Board or LEAs.

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

This rule amendment is not expected to have fiscal impact on small businesses' revenues or expenditures. It adds a definition of the term "suspension" to provide LEAs with greater clarity during the classifying and reporting of school suspensions. This rule amendment is not expected to create significant costs or savings for the Board or LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (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 amendment 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 amendment is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It adds a definition of the term "suspension" to provide LEAs with greater clarity during the classifying and reporting of school suspensions. This rule amendment is not expected to create significant costs or savings for the Board or LEAs.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTICES OF PROPOSED RULES

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:	01/15/2020
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R277. Education, Administration.

R277-100. Definitions for Utah State Board of Education (Board) Rules.

R277-100-1. 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; and

(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.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Agency" means:

- (a) an entity governed by the Board;
- (b) an LEA; or
- (c) a grant sub-recipient.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and Board rule.

(5) "Comprehensive dropout intervention and prevention program" means a program that:

(a) addresses needs of students who are not succeeding in a traditional school environment;

(b) provides targeted instruction that increases student credit-earning rates toward graduation; and

(c) partners with community entities to provide a continuum of services with the focus of preparing students for life after high school.

(6) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(7) "Dual enrollment student" means a student who:

- (a) is enrolled simultaneously in:
- (i) a private school or home school; and
- (ii) a public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which the LEA provides instruction.

(8) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Board rule.

(9) "ESSA" or the "Every Student Succeeds Act" means the Congressional act, which reauthorized the Elementary and Secondary Education Act of 1965, which is found at 20 U.S.C. 6301, et seq.

(10)(a) "Evaluate" or "review" means to observe and assess a program receiving state or federal funds with an objective of making recommendations, if appropriate, for necessary changes or improvement.

(b) An "evaluation" or "review" may include providing training and technical assistance on program-related matters and performing on-site reviews of program operations.

(11)(a) "External audit" means an appraisal activity established under the direction of an individual or entity outside of the subject agency to examine and evaluate the adequacy and effectiveness of:

- (i) agency control systems;
- (ii) compliance;
- (iii) performance; and
- (iv) financial position.

(b) An external audit is conducted in accordance with current professional and industry technical standards, as applicable, for external audits.

(12)(a) "Home school student" means a student who:

(a) attends a home school pursuant to Section 53G-6-204; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(13) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(14) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(15)(a) "Internal audit" means an independent appraisal activity established within an agency as a control system to examine and objectively evaluate the adequacy and effectiveness of other internal control systems within the agency.

(b) An "internal audit" is conducted in accordance with the current:

(i) International Standards for the Professional Practice of Internal Auditing; or

(ii) Government Auditing Standards, issued by the Comptroller General of the United States.

(16)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(17)(a) "LEA governing board" means:

- (i) for a school district, a local school board; and
- (ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(18)(a) "Monitor" or "oversee" means to formally supervise, inspect, or examine the compliance, performance, or finances of a program receiving state or federal education funding.

(b) A monitoring or oversight program may include:

(i) review of financial and performance reports required of the subject program;

(ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;

(iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and

(iv) any function performed in an evaluation or review.

(19) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

(20) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(21) "Preschool" means a school in which all the students enrolled are pre-kindergarten.

(22)(a) "Private school student" means a student who:

(a) attends a private school; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(23) "Program" means an instructional environment that does not meet the criteria to be classified a school, as described in Subsection (26).

(24) "Public school student" means a student who:

(a) attends an LEA governed public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding.

(25) "School" means an instructional environment that:

(a) is governed by an LEA board;

(b) has an assigned administrator;

(c) has enrolled students that generate average daily membership hours during the school year;

(d) has assigned instructional staff;

(e) provides instruction in the Utah core standards;

(f) has one or more grade groups in the range from kindergarten through grade 12; and

(g) is not a program for students enrolled in another public school.

(26) "Social emotional learning" or "SEL" means the process through which students acquire and effectively apply the knowledge, attitude, and skills necessary to:

(a) understand and manage emotions;

(b) set and achieve positive goals;

(c) feel and show empathy for others;

(d) establish and maintain positive relationships;

(e) make responsible decisions; and

(f) self-advocate.

(27) "Split enrollment student" means a student who is:

(a) regularly enrolled at two schools within two LEAs at the same time;

(b) eligible for graduation and other services at both schools; and

(c) subject to the split enrollment provisions of R277-419, counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

(28) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

(29) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(30) "Suspension" means:

(a) an in-school suspension that is a temporary removal of a student from the student's regular classroom for disciplinary reasons for at least half a school day but remains under the direct supervision of school personnel; or

(b) an out-of-school suspension that is the removal of a student from school grounds for disciplinary reasons unless the student removed is:

(i) served solely under a Section 504 plan, where an out-of-school suspension is the excluding of the student from school for disciplinary purposes for one day or longer; or

(ii) a student with disabilities under IDEA, where an out-of-school suspension is the temporary removal of the student from the student's regular school for disciplinary reasons to another setting.

[~~(30)~~](31) "USDB" means the Utah Schools for the Deaf and the Blind.

KEY: Board of Education, rules, definitions

Date of Enactment or Last Substantive Amendment: [August 11, 2016]2020

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R277-114	Filing No.
Ref (R no.):		52494

Agency Information

1. Department:	Utah State Board of Education	
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Agency:	Administration	
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Street address:	250 E 500 S	
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City, state:	Salt Lake City, UT	
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Mailing address:	PO Box 144200	
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City, state, zip:	Salt Lake City, UT 84114-4200	
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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.

NOTICES OF PROPOSED RULES

General Information

2. Rule or section catchline:

Corrective Action and Withdrawal or Reduction of Program Funds

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This rule is being updated to incorporate language to clarify the scope of the rules application, the required elements of a corrective action plan, and the appropriate process to follow to place a local education agency (LEA) on a corrective action plan and the appeals process an LEA has available.

4. Summary of the new rule or change:

This rule updates the details in which a corrective action plan is applicable to an LEA and what it may contain. More specifically, this rule defines the term "program" and "subrecipient;" requires an LEA comply with documentation request for program monitoring; requires "specific conditions" be included in a corrective action plan and provides examples of what those may include; and requires the consultation of the charter school authorizer in cases where the LEA being placed on a corrective action plan is a charter school.

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 government revenues or expenditures. It makes largely technical and clarifying revisions.

B) Local governments:

This rule amendment is not expected to have any fiscal impact on local governments' revenues or expenditures. It makes largely technical and clarifying revisions.

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

This rule amendment is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It makes largely technical and clarifying revisions.

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 rule amendment 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 amendment is not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. It makes largely technical and clarifying revisions.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. This rule amendment makes largely technical and clarifying revisions.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-401(8)(c)
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule **MAY** become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.**R277-114. Corrective Action and Withdrawal or Reduction of Program Funds.****R277-114-1. 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) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-401(8)(c), which allows the Board to make rules setting forth the procedures to be followed for enforcing Board rules.

(2) The purpose of the rule is to provide procedures for public education program monitoring and corrective action for noncompliance with identified:

- (a) program requirements;
- (b) program accountability standards; and
- (c) financial propriety.

R277-114-2. Definitions.

(1) "Program" means a public education project[or plan under the direction of the Board], plan, or other activity required by:

- (a) administrative rule;
- (b) state law; or
- (c) federal law.

(2) "Recipient" means an LEA[or a] school, or subrecipient.

(3) "Subrecipient" means a non-Federal entity that receives an award through the Board to carry out part of a Federal program, or a non-Federal entity that is the direct awardee of other federal awards from a Federal awarding agency.

R277-114-3. Program Monitoring.

(1) For each program, the Superintendent shall design and implement a consistent monitoring plan or process that includes standards for both program outcomes and program financial compliance.

(2) The Superintendent shall notify all recipients of the initiation of or changes to any monitoring plan or process.

(3) The Superintendent shall monitor compliance with:

- (a) program outcomes and requirements;
- (b) reporting requirements; and
- (c) financial [compliance] requirements.

(4) An LEA shall provide the Superintendent all requested information or documents to comply with this Section.

NOTICES OF PROPOSED RULES

R277-114-4. Corrective Action Plans.

(1) The Superintendent shall place a recipient on a corrective action plan when a recipient:

- does not demonstrate satisfactory program outcomes as described by the monitoring plan or process;

(b) demonstrates noncompliance with program requirements or allowable program expenditures; or

(c) does not comply with requests to provide accurate and complete program or financial information, as described by the monitoring plan or process.

(2) The Superintendent shall clearly outline in a corrective action plan:

(a) all areas of noncompliance;

(b) the specific conditions to be met as a result of noncompliance;

([b]c) steps required to satisfy the corrective action plan; and

([e]d) a reasonable time frame for the recipient to correct identified issues.

(3) The specific conditions described in Subsection (2)(b) may include:

(a) requiring payments as reimbursements rather than advance payments;

(b) withholding authority to proceed to the next step until receipt of evidence of acceptable performance within a given period of performance;

(c) requiring additional, more detailed financial reports;

(d) requiring additional project monitoring;

(e) requiring the recipient to obtain technical or management assistance; or

(f) establishing additional prior approvals.

([3]4) A corrective action plan may also include a provision and a timeline for:

(a) referral for risk-based monitoring [by a Board section];

(b) a referral for an audit by:

(i) an external auditor; or

(ii) [for monitoring to] the Board's internal audit department, with approval of the Board's Audit Committee;

(c) periodic meetings between a recipient administrator or governing board member and the State Superintendent of Public Instruction or a Deputy Superintendent[member of the Superintendency];

(d) planned appearances before the Board to provide status updates; and

(e) training for the [LEA's]recipient's staff.

(5) If the recipient is a charter school, the Superintendent shall consult with the charter authorizer in the creation of the corrective action plan and report regularly to the charter authorizer about the status of the noncompliant program recipient.

([4]6) The Superintendent may employ escalating restrictive conditions in a corrective action plan based on:

(a) the severity of the violation as determined by the program's monitoring plan or process; or

(b) repeated violations by a[n LEA] recipient.

([§]7) The Superintendent may include penalties for non-compliance with a corrective action plan in accordance with Subsection 53E-3-401(8).

([6]8) The Superintendent shall give notice and a copy of the corrective action plan in writing to:

(a) the recipient[LEA]'s administrators;

(b) the respective [LEA]recipient's governing board; and

(c) the charter school authorizer, if applicable.

([7]9) The Superintendent shall report to the Board monthlyregularly about the status of noncompliant program recipients.

R277-114-5. Recipient Appeals.

(1) A recipient may file an appeal to the Board of any adverse decision of the Superintendent resulting from a corrective action plan or penalty.

(2) An appeal must be made in writing and within 30 days of the date of the Superintendent's action.

(3) Except for corrective action subject to 34 CFR 76.783, [T]the Board may:

(a) review the appeal as a full board; or

(b) refer the matter to the Board audit committee to make a recommendation to the Board for action.

KEY: programs, noncompliance, corrective action

Date of Enactment or Last Substantive Amendment: [February 7, 2017]2020

Notice of Continuation: May 1, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401[BR](4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R277-309	Filing No.
Ref (R no.):		52495

Agency Information

1. Department:	Utah State Board of Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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:

Appropriate Licensing and Assignment of Teachers

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This rule establishes licensing requirements for educator positions in the state. This new rule was adopted as part

of the on-going licensing changes at the State Board of Education (Board).

4. Summary of the new rule or change:

The provisions in this rule from the previous requirements are as follows:

This rule clarifies that the school leadership license area is required only for principals and vice-principals. It allows local education agencies (LEAs) to establish the requirements for all other district-level administrative positions as they see fit. Charter school administrative positions remain exempt from this specific aspect of the rule as per statute.

This rule provides a pathway for an individual with a professional license area to receive an associate endorsement without passing the relevant content knowledge assessment, similar to a current state-approved endorsement plan (SAEP). The individual must pass the assessment in order to receive a professional endorsement in the area.

This rule provides a pathway for LEA-specific credentials to be designated as "eminence" which allows the credential to be renewed at the request of the LEA without state Board approval as long as the teacher is assigned less than 37% of the regular instructional load, similar to the current eminence rule.

This rule clarifies that a school social worker license area is optional for an individual with a school social worker assignment.

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 makes relatively minor changes to the state's licensing rules to improve consistency with the Board's new licensing structure.

B) Local governments:

This rule is not expected to have any fiscal impact on local governments' revenues or expenditures. It makes relatively minor changes to the state's licensing rules to improve consistency with the Board's new licensing structure.

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

This rule is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It makes relatively minor changes to the state's licensing rules to improve consistency with the Board's new licensing structure.

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 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 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 persons other than small businesses', businesses', or local government entities' revenues or expenditures. It makes relatively minor changes to the state's licensing rules to improve consistency with the Board's new licensing structure.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(2)(a)
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.

R277-309. Appropriate Licensing and Assignment of Teachers.

R277-309-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-6-201(2)(a), which authorizes the Board to rank, endorse, or classify licenses.

(2) The purpose of this rule is to provide criteria for:

(a) local school boards to employ educators in appropriate assignments; (b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and (c) the Board and local school boards to satisfy the requirements of ESEA for local school boards to receive federal funds.

R277-309-2. Definitions.

(1) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

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

(a) completed Board approved course work;

(b) content tests; or

(c) years of successful experience including evidence of student performance.

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

(4) "Elementary setting" means an instructional model where students typically have a single class with a single teacher primarily responsible for instruction in all core standards established in Rule R277-700.

(5) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the

generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-309-5.

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

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

(11) "Secondary setting" means an instructional model where students typically rotate between classes taught by multiple teachers that are considered subject matter experts, primarily responsible for instruction in the core standards in an area as established by the Board in Rule R277-700.

R277-309-3. Required Licensing.

(1) All teachers in public schools shall hold a current educator license along with appropriate license areas of concentration and endorsements that is not suspended or revoked by the Board under Section 53E-6-604.

(2) An LEA shall receive assistance from the Superintendent to the extent of resources available to have all teachers hold a professional license, license area, and endorsement in all areas in which the teacher is assigned.

(3) An LEA shall only hire a teacher who:

(a) holds a current educator license; or

(b) is in the process of becoming fully licensed and endorsed.

(4) In accordance with Section 53E-3-401, if an LEA hires an educator without appropriate licensure, the Superintendent may recommend that the Board withhold the following until the LEA's educators are appropriately licensed:

(a) LEA salary supplement funds under Section 53F-2-405 and Rule R277-110; and

(b) Educator quality funds under Subsection 53F-2-305(2) and Rule R277-486.

R277-309-4. Appropriate Licenses, License Areas of Concentration, and Endorsements.

(1) An educator assigned to teach a class in kindergarten through grade 3 shall hold a current educator license with:

(a) an early childhood license area of concentration;

(b) an elementary license area of concentration; or

(c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(2) An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current educator license with:

(a) an elementary license area of concentration; or

(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(3) An elementary content specialist in Fine Arts or Physical Education shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate K-12 endorsement.

(4) An elementary content specialist in reading or English as a Second Language shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate endorsement.

(5) An elementary content specialist in any content area not listed in Subsections (3) and (4) shall hold a current educator license with an elementary, secondary, special education, or deaf education license area of concentration.

(6) An educator assigned to teach a class in grade 6 in a secondary setting shall hold a current educator license with:

(a) an elementary license area of concentration;

(b) a secondary license area of concentration with the appropriate endorsement for all assigned courses; or

(c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(7) An educator assigned to teach a class in grade 7 or grade 8 in a secondary setting shall hold a current educator license with:

(a) an elementary or secondary license area of concentration with the appropriate endorsement for all assigned courses; or

(b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(8) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current educator license with:

(a) a secondary or a career and technical education license area of concentration with the appropriate endorsement for all assigned courses; or

(b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(9) An educator assigned to serve or teach a class of students with disabilities shall hold a current educator license with a special education license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate endorsement.

(10) An educator assigned to serve preschool-aged students with disabilities shall hold a current educator license with a preschool special education license area of concentration.

(11) An educator assigned to serve deaf and hard of hearing students shall hold:

(a) a current educator license with a special education license area of concentration and deaf and hard of hearing endorsement; or

(b) a deaf education license area of concentration.

(12) An educator assigned to provide student support services as defined in Rule R277-306 shall hold a current educator license with the appropriate support service license area of concentration.

(13) An educator assigned as a school-based or LEA-based specialist shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the LEA.

(14) An educator assigned as a principal or vice principal in a school district shall hold a current educator license and a school leadership license area of concentration.

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

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

(17) Notwithstanding Subsection R277-309-3(1), an individual may hold a school social work assignment in an LEA without a school social worker license area of concentration.

NOTICES OF PROPOSED RULES

R277-309-5. Eminence.

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

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

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

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

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

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

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

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

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

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

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

KEY: educator, license, assignment

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201(2)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R277-419	Filing No.
Ref (R no.):		52502

Agency Information

1. Department:	Utah State Board of Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Pupil Accounting

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The purpose of this amendment is to clarify and update the calculation of "instructional time" regarding what is allowed to be counted toward the calculation.

4. Summary of the new rule or change:

The changes in this rule filing clarify that recess and breakfast after the bell are allowed to be considered part of "instructional time".

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 government revenues or expenditures. It clarifies that alternative breakfast models where breakfast is consumed in class counts as instructional time as well as all recess periods. Prior rule language included recess periods as instructional time if the recess period included organization or instruction from school staff. These changes mean all recess periods count as instructional time. These changes will not impact education funding.

B) Local governments:

This rule amendment is not expected to have any fiscal impact on local governments' revenues or expenditures. It clarifies that alternative breakfast models where breakfast is consumed in class counts as instructional time as well as all recess periods. Prior rule language included recess periods as instructional time if the recess period included organization or instruction from school staff. These changes mean all recess periods count as instructional time. These changes will not impact education funding.

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

This rule amendment is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It clarifies that alternative breakfast models where breakfast is consumed in class counts as

instructional time, as well as all recess periods. Prior rule language included recess periods as instructional time if the recess period included organization or instruction from school staff. These changes mean all recess periods count as instructional time. These changes involve minimum school days and pupil accounting which do not directly 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 rule amendments 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.

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 amendments are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. It clarifies that alternative breakfast models where breakfast is consumed in class counts as instructional time, as well as all recess periods. Prior rule language included recess periods as instructional time if the recess period included organization or instruction from school staff. These changes mean all recess periods count as instructional time. These changes involve minimum school days and pupil accounting which do not directly impact 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 Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These rule amendments 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 amendments 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

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State and federal laws. State code or constitution citations (required):		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(e)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	A) Comments will be accepted until: 03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-1. Authority and Purpose.

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
- (c) Subsection 53E-3-501(1)(e), which directs the Board to establish rules and standards regarding:
 - (i) cost-effectiveness;
 - (ii) school budget formats; and
 - (iii) financial, statistical, and student accounting requirements;
- (d) Subsection 53E-3-602(2), which requires a local school board's auditing standards to include financial accounting and student accounting;
- (e) Subsection 53E-3-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and
- (f) Section 53G-4-404, which requires annual financial reports from all school districts.

(2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE)[-] Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

- (a) where a student learns at least in part:
- (i) at a supervised brick and mortar location away from a student's home; and
- (ii) through an online delivery; and
- (b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

(7) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Section R277-419-5.

(11) "Enrollment verification data" includes:

- (a) a student's birth certificate or other verification of age;
- (b) verification of immunization or exemption from immunization form;
- (c) proof of Utah public school residency;
- (d) family income verification; or
- (e) special education program information, including:
 - (i) an individualized education program;
 - (ii) a Section 504 accommodation plan; or
 - (iii) an English learner plan.

(12) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(13)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.

(b) The differences between a home school student and an online student include:

(i) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(ii) an online student is:

(A) subject to laws and rules governing state and federal mandated tests; and

(B) included in accountability measures;

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-516 and R277-520;

(iv) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53F, Chapter 2, Minimum School Program Act.

(14) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(15)(a) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people.

(b) "Influenza pandemic" or "pandemic" may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(16) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(17) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(18)(a) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date.

(b) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(c) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(19) "Minimum School Program" means the same as that term is defined in Section 53F-2-102.

(20) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;

(c) blended learning program; or

(d) competency based learning program.

(21) "Online learning program" means a program:

(a) that is under the direction of an LEA; and

(b) in which students receive educational services primarily over the internet.

(22) "Private school" means an educational institution that:

(a) is not an LEA;

(b) is owned or operated by a private person, firm, association, organization, or corporation; and

(c) is not subject to governance by the Board consistent with the Utah Constitution.

(23) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(24) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

(25) "Qualifying school age" means:

(a) a person who is at least five years old and no more than 18 years old on or before September 1;

(b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before July 1;

(c) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

(26) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s)[-] after the student's cohort has graduated due to:

(a) sickness;

(b) hospitalization;

(c) pending court investigation or action; or

(d) other extenuating circumstances beyond the control of the student.

(27) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.

(28) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.

(29) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

(30) "School" means an educational entity governed by an LEA that:

(a) is supported with public funds;

(b) includes enrolled or prospectively enrolled full-time students;

(c) employs licensed educators as instructors that provide instruction consistent with Section R277-502;

(d) has one or more assigned administrators;

(e) is accredited consistent with Section R277-410-3; and

(f) administers required statewide assessments to the school's students.

(31) "School day" means a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the requirements described in Section R277-419-4.

(32) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

(33) "School of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(34) "School year" means the 12 month period from July 1 through June 30.

(35) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

(36) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

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- (37) "SSID" means Statewide Student Identifier.
- (38) "Unexcused absence" means an absence charged to a student when:
- (a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-6(3); and
 - (b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53G-6-201.
- (39) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.
- (40) "Youth in custody (YIC)" means a person under the age of 21 who is:
- (a) in the custody of the Department of Human Services;
 - (b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
 - (c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.

- (1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.
- (b) All schools shall submit a Clearinghouse report to the Superintendent.
- (c) All schools shall employ at least one licensed educator and one administrator.
- (2)(a) A student who is enrolled in a program is considered a member of a public school.
- (b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.
- (c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.
- (d) A course taught at a program shall be credited to the appropriate school of enrollment.
- (3) A private school or program may not be required to submit data to the Superintendent.
- (4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days.

- (1)(a) Except as provided in Subsection (1)(b) and Subsection 53F-2-102([7]4), an LEA shall conduct school for at least 990 instructional hours over a minimum of 180 school days each school year.
- (b) an LEA may seek an exception to the number of school days described in Subsection (1)(a):
- (i) except as provided in Subsection (1)(b)(ii), for a whole school or LEA as described in R277-121;
 - (ii) for a school closure due to snow, inclement weather, or other emergency as described in R277-419-12; or
 - (iii) for an individual student as described in Section R277-419-11.
- (2)(a) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.
- (b) All school day calculations shall:

- (i) exclude lunch periods and pass time between classes;
~~but may include recess periods that include organization or instruction from school staff;~~
- (ii) include recess periods; and
- (iii) include alternative breakfast models where breakfast is consumed in class.

(c) Each school day that satisfies the minimum hourly instruction time described in Subsection R277-419-2(31), shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

(3)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency or activity time as part of the minimum required time to qualify for full Minimum School Program funding.

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board shall provide adequate contingency school days and hours in the LEA's yearly calendar to avoid the necessity of requesting a waiver except in the most extreme circumstances.

(6)(a) In addition to the allowance to use up to 32 instructional hours or four school days for professional learning described in Subsection 53F-2-102(6), to provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in this R277-419-4 and Subsection R277-419-2(32), are satisfied.

(b) A school may conduct parent-teacher and student Plan for College and Career Readiness conferences during the school day.

(c) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(e) An LEA may designate no more than a total of 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If instruction days are designated for kindergarten assessment:

(i) an LEA shall designate the days in an open meeting;

(ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

(iii) qualified school employees shall conduct the assessment consistent with Section 53F-4-205; and

(iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

(h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

- (a) has not previously earned a basic high school diploma or certificate of completion;
- (b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;
- (c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);
- (d) is a resident of Utah as defined under Section 53G-6-302;
- (e) is of qualifying school age or is a retained senior;
- (f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;
- (ii) has direct instructional contact with a licensed educator provided by an LEA at:

 - (A) an LEA-sponsored center for tutorial assistance; or
 - (B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

- (i) injury;
- (II) illness;
- (III) surgery;
- (IV) suspension;
- (V) pregnancy;
- (VI) pending court investigation or action; or
- (VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) [–]on the campus of another state funded institution where such a course is:

- (A) not offered at the student's school of membership;
- (B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(14); and
- (C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or
- (iv) is enrolled in a nontraditional program under the direction of an LEA that:

 - (A) is consistent with the student's SEOP/Plan for College and Career Readiness;
 - (B) has been approved by the student's counselor; and
 - (C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

- (a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.
- (b) For a student enrolled in a nontraditional program, an LEA shall:
 - (i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);
 - (ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b)[–] may include some or all of the following components, in addition to other components, as determined by an LEA:

- (a) a minimum student login or teacher contact requirement;
- (b) required periodic contact with a licensed educator;
- (c) a minimum hourly requirement, per day or week, when students are engaged in course work; or
- (d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b)[–] is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b)[–] and (2)(c)[–] do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

- (i) 170 days; plus
- (ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for

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which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(5) For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be $(900/990)*180$, and the LEA would report 164 days.

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

(8) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(9) The sum of regular and resource special education membership days may not exceed 360 days.

(10) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53G-6-204 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53G-6-707(7); or

(iv) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53F-2-302.

R277-419-8. Reporting Requirements, LEA Records, and Audits.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

(3) To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;
(b) exit date;
(c) exit or high school completion status;
(d) whether or not an absence was excused;
(e) disability status (resource or self-contained, if applicable); and
(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(4) An LEA shall ensure that:
(a) computerized or manually produced records for CTE programs are kept by teacher, class, and classification of instructional program (CIP)[-] code; and

(b) the records described in Subsection (4)(a)[-] clearly and accurately show for each student in a CTE class the:

(i) entry date;
(ii) exit date; and
(iii) excused or unexcused status of absence.

(5) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

(6) Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;

(b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and

(c) schools shall continue instructional activities throughout required calendared instruction days.

(7) An LEA shall employ an independent auditor, under contract, to:

(a) annually audit student accounting records; and
(b) report the findings of the audit to:

(i) the LEA board; and

(ii) the Financial Operations Section of the Board.

(8) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office.

(9) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Sections R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-9. High School Completion Status.

(1) An LEA shall account for the final status of all students who enter high school (grades 9-12)[-] whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Subsection R277-705-4(2)[-] or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(b) completers are students who have not satisfied Utah's requirements for graduation but who:

(i) are in membership in twelfth grade on the last day of the school year; and

(ii)(A) meet any additional criteria established by an LEA consistent with its authority under Section R277-705-4;

(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: <http://www.schools.utah.gov/sars/Laws.aspx> and the Utah State Board of Education;

(C) meet any criteria established for special education students under Subsection R277-700-8(5); or

(D) pass a General Educational Development (GED)[-] test with a designated score;

(c) continuing students are students who:

(i) transfer to higher education, without first obtaining a diploma;

(ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or

(iii) age out of special education;

(d) dropouts are students who:

(i) leave school with no legitimate reason for departure or absence;

(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);

(iii) are expelled and do not re-enroll in another public education institution; or

(iv) transfer to adult education;

(e) an LEA shall exclude a student from the cohort calculation if the student:

(i) transfers out of state, out of the country, to a private school, or to home schooling;

(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;

(iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53G-6-707 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;

(iv) dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.

(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Section R277-484-3.

(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Section R277-484-3.

(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.

(c) The Superintendent shall include a student in a school's graduation rate if:

(i) the school was the last school the student attended before the student's expected graduation date; and

(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).

(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(e) A student's graduation status will be attributed to the school attended in their final cohort year.

(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(i) school with an attached graduation status for the final cohort year;

(ii) school with the latest exit date;

(iii) school with the earliest entry date;

(iv) school with the highest total membership;

(v) school of choice;

(vi) school with highest attendance; or

(vii) school with highest cumulative GPA.

(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.

(1)(a) Pursuant to Section 53E-4-308, an LEA shall:

(i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and

(ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

(b) The unique student identifier:

(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;

(ii) may not be the student's social security number or contain any personally identifiable information about the student.

(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53G-6-603;

NOTICES OF PROPOSED RULES

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.

(3) The Superintendent and LEAs shall track students and maintain data using students' legal names.

(4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.

(5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.

(6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Exceptions.

(1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.

(b) The time an excepted student is required to attend school shall be established by the student's IEP or Plan for College and Career Readiness.

(2) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

R277-419-12. Snow, Inclement Weather, or Other Emergency School Closure Days.

(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1)[-] if:

(a) the LEA closes a school for one school day due to excessive snow, inclement weather, or an other emergency; and

(b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.

(2) The Superintendent may grant up to one waiver, per school year, per school, for the school to close due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided adequate contingency school days and hours into the LEA's calendar to avoid the necessity of requesting a waiver as required in Subsection R277-419-4(5).

(3) If the Superintendent denies an LEA's request described in Subsection (1), the LEA may appeal the Superintendent's decision by making the request of the full Board.

(4) If an LEA seeks a waiver for two or more school days due to excessive snow, inclement weather, or other emergency, the LEA shall seek the waiver pursuant to the procedures described in R277-121.

(5)(a) An LEA may request the Board to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (5)[-] may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Board or Superintendent as described in this Subsection (5)[-] shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Board may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

KEY: education finance, school enrollment, pupil accounting

Date of Enactment or Last Substantive Amendment: [October 16, 2018]2020

Notice of Continuation: August 14, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-102(7); 53E-3-501(1)(e); 53E-3-602(2); 53E-3-301(3)(d); 53G-4-404

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R277-445	Filing	No.
Ref (R no.):		52496	

Agency Information

1. Department:	Utah State Board of Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:

Classifying Small Schools as Necessarily Existential

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This rule amendment is updating the application process and the criteria for classifying a school as a Necessarily Existent Small School (NESS) school.

4. Summary of the new rule or change:

The changes in this rule update calculations used to determine whether a school qualifies as a NESS school and updates to the NESS application process.

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 government revenues or expenditures. It clarifies criteria for a school to qualify for the NESS program and requires the Utah State Board of Education (Board) to distribute remaining NESS balances in the current fiscal year with a minimum of 95% of the distributions based on the number of Weighted Pupil Unit (WPU) funds generated by the NESS program. These changes align with recommendations approved by the NESS Work Group and are not expected to create material fiscal impacts for the Board.

B) Local governments:

This rule amendment may impact local governments' revenues and expenditures. It clarifies criteria for a school to qualify for the NESS program and requires the Board to distribute remaining NESS balances in the current fiscal year with a minimum of 95% of the distributions based on the number of WPU funds generated by the NESS program. These changes are not expected to add or remove schools from the NESS program. However, they will create some redistributions of NESS funding amongst the school districts with NESS schools. However, these changes are expected to be relatively minor.

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

This rule amendment is not expected to have material fiscal impacts on small businesses' revenues or expenditures. It clarifies criteria for a school to qualify for the NESS program and requires the Board to distribute remaining NESS balances in the current fiscal year with a minimum of 95% of the distributions based on the number of WPU funds generated by the NESS program. These changes align with recommendations approved by the NESS Work Group and are not expected to create material fiscal impacts for 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. This rule amendment 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 amendment is not expected to have material fiscal impacts on persons other than small businesses', businesses', or local government entities' revenues or expenditures. It clarifies criteria for a school to qualify for the NESS program and requires the Board to distribute remaining NESS balances in the current fiscal year with a minimum of 95% of the distributions based on the number of WPU funds generated by the NESS program. These changes align with recommendations approved by the NESS Work Group and are not expected to create material fiscal impacts for persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no material compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-2-304(3)
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Public Notice Information

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

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted 03/02/2020 until:

10. This rule change MAY become effective on: 03/09/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.

R277-445. Classifying Small Schools as Necessarily Existential.

R277-445-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53F-2-304(3), which requires the Board to adopt rules that:

(i) govern the approval of necessarily existent small schools consistent with state law; and

(ii) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area; 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)(a) The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent, which qualifies the schools for additional funding.

R277-445-2. Definitions.

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "NESS" means Necessarily Existential Small School.

([2]3) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-3. Standards.

(1) A school may be classified as necessarily existent if the school's ADM does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership;

(b) 300 for one or two-year secondary schools;

(c) 450 for three-year secondary schools;

(d) 500 for four-year secondary schools; or

- (e) 600 for six-year secondary schools.
- (2) In addition to the requirements of Subsection (1), one-way bus travel[~~over Board approved bus routes~~] for any student from the assigned school to the nearest school of the same type within the same district[~~of the same type~~] shall require:
- (a) students in kindergarten through grade six to travel more than 45 minutes; or
 - (b) students in grades seven through twelve to travel more than one hour and 15 minutes.
- (3) Notwithstanding Subsection (2), the Superintendent may classify a school that meets the criteria of Subsection(1), as necessarily existent if:
- (a) the school is in a district which has been consolidated to the maximum extent possible[~~, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined~~];
 - (b) there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years, provided that[~~:~~];
 - (i) the Superintendent may only classify the school as necessarily existent until its ADM surpasses the size standard for small schools of the same type;
 - (ii) the Superintendent shall annually compare the school's ADM to the school's projected ADM to determine increases or decreases in enrollment; and
 - (iii) if the assessment for the first or second year shows the increase in the school's ADM is less than 80 percent of the projected annual increase, the school shall no longer be classified as necessarily existent;
 - (c) the Superintendent determines that consolidation may result in undesirable social, cultural, and economic changes in the community, and:
 - (i) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the Superintendent after consultation with the district; or
 - (ii)(A) the district would incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs would exceed the insurance replacement value of the exiting school by 30 percent;
 - (B) the existing school has a life expectancy of at least ten years; but
 - (C) In the event that the ADM from the school seeking necessarily existent small school status under Subsection (3)(c)(ii), when combined with the ADM at the existing school exceed criteria in Subsection (1), the Superintendent may not classify the existing school as necessarily existent; or
 - (d) the school does not qualify under Subsections (3)(a) through (c), and removal of the necessarily existent status would result in capital costs that the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources.
 - (4) The Superintendent may not recognize a school with less than six grades as a necessarily existent small school if it[s] is feasible in terms of school plant to consolidate the school into a larger school, which, if consolidated, would meet the criteria of Subsections (1) and (2).
 - (5) If the Superintendent determines that a secondary complex or attendance area meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the Superintendent shall not

invalidate the qualifying status as a result of a reorganization pattern by a district.

(6)(a) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall use[~~Necessarily Existent Small Schools~~] NESS Program funds to cover out-of-state tuition reimbursements under Rule R277-421.

(b) [~~Any prior year~~]The Superintendent shall distribute any funding balance in the [~~Necessarily Existent Small Schools~~]NESS Program in the current year with:~~shall be distributed by the Superintendent~~

(i) a minimum of 95% of the distribution based on the number of WPU funds generated for eligible necessarily existent small schools; and

(ii) the remaining funds distributed[~~in the current year~~] using a formula that considers the tax effort of a local board of education.

(7)(a) A school district shall utilize additional WPU funds allocated for necessarily existent small schools for programs at the school for which the units were allocated.

(b) Funds allocated under this rule shall supplement and not supplant other funds allocated to schools by the local board of education.

(8) The Superintendent shall classify a school after consultation with the district and in accordance with applicable state statutes and Board rules.

R277-445-4. Application Procedures.

(1) Beginning in FY2020, a school district shall apply for funding from the NESS program for all eligible schools on a form approved by the Superintendent by April 2.

(2) A school district shall certify that the information in the district's NESS program application remains accurate in each ensuing fiscal year on a form provided by the Superintendent by April 2.

(3) The Superintendent shall review no less than 20% of the certifications submitted under Subsection (2) on a rotating basis annually to ensure compliance with this Rule R277-445.

KEY: school enrollment, educational facilities, small schools

Date of Enactment or Last Substantive Amendment: [September 21, 2017]2020

Notice of Continuation: July 19, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-304(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code	R277-601	Filing No.
Ref (R no.):		52497

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 for Utah School Buses and Operations

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The purpose of this amendment is to bring the rule into compliance with the rulewriting manual style guide and to incorporate the Bus Operator manual.

4. Summary of the new rule or change:

All changes are technical changes to update the rule to be compliant with the rulewriting manual style guide including updating the formatting, rewording sections to be more concise, and incorporate by reference the Bus Operator manual.

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 government revenues or expenditures. It makes technical revisions to bring it up to date with current formatting and style guide requirements.

B) Local governments:

This rule amendment is not expected to have any fiscal impact on local governments' revenues or expenditures. It makes technical revisions to bring it up to date with current formatting and style guide requirements.

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

This rule amendment is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It makes technical revisions to bring it up to date with current formatting and style guide requirements.

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 amendment 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 amendment is not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. It makes technical revisions to bring it up to date with current formatting and style guide requirements.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. This rule amendment makes technical revisions to bring it up to date with current formatting and style guide requirements.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small	\$0	\$0	\$0

Businesses			
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule amendment has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(d)
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Standards for Utah School Buses and Operations Manual

Publisher	Utah State Board of Education
Date Issued	December 7, 2018
Issue, or version	First

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	03/02/2020
until:	

10. This rule change MAY 03/09/2020 become effective on:

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, Deputy and title:	Angie Stallings, Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.**R277-601. Standards for Utah School Buses and Operations.****[R277-601-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Local board" means the local school board of education.]

R277-601-2. Authority and Purpose.

- [A-]1. This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public education in the Board[;]
 - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and
 - (c) Subsection 53E-3-501(1)(d), which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs[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 specify standards for state student transportation funds, school buses, and school bus drivers utilized by school districts.

NOTICES OF PROPOSED RULES

R277-601-[3]2. [Standards]Incorporation By Reference.

[A. The local board and school district personnel shall act consistent with the manual entitled STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, which includes information received from Utah school districts, the Utah Transportation Commission, and the Utah Department of Public Safety and is available at each department or agency.]

(1) This rule incorporates by reference the Standards for Utah School Buses and Operations Manual, December, 2018 Edition, which contains the standards for new and used school buses, operation requirements for school bus operators, and procedures for passenger safety.

(2) A copy of the current Utah School Buses and Operations Manual is located:

(a) at <https://www.schools.utah.gov/File/2f934a74-4cbf-4473-ba60-8912a07ae640>;

(b) at the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111; and

(c) on the agency websites of the following state agencies:

(i) on the Utah Transportation Commission; and

(ii) on the Utah Department of Public Safety.

R277-601-3. Additional Required Standards.

In addition to t[F]he [STANDARDS]Standards For Utah School Buses and Operations manual, an LEA shall [include]enforce the following:

(1) a school bus operator's primary responsibility, consistent with training and policy, is always the safety of passengers and the safety of the public.

(2) a school bus operator's proper use of [E]lectronic and telecommunications devices including:[

(a) A school bus operator's primary responsibility, consistent with training and policy, is the safety of passengers and the safety of the public at all times.]

([b]a) [A school bus operator shall not]except as described in Subsection (2)(d) a prohibition on the use of a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a school bus operator[driver] from his responsibilities, whether hand held or not, while the school bus is in motion and not appropriately parked or secured.];

(b) the prohibition described in subsection (2)(a) [This prohibition]does not apply to the safe and appropriate use of two-way radios or to mounted[GPS systems];]

(c) an LEA [All school districts and public schools]that regularly transports students shall maintain documentation of training for a school bus operator[drivers] and employees in the safe and appropriate use of two-way radios[.]; and

([e]d) [Once the bus is stopped and safely parked,]a school bus operator may use an electronic device once the bus is stopped and safely secured for:

(i) emergencies[.];

(ii) to assist special needs students[.];

(iii) for behavior management[.];

(iv) for appropriate assistance for field/activity trips[. or]

(v) for other business-related issues[.]; or

(vi) personal use if all passengers are safely off the bus and at a safe distance.[

(d) A school bus operator may use an electronic device for personal use once a school bus is safely parked, appropriately secured and all passengers are safely off and at a safe distance from the bus, consistent with school district policy.]

([e]3) [Any violation of these provisions]Any use of an electronic device inconsistent with this section for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.

([f]4) Violations of [these provisions]this section may result in personnel action(s) against the school bus operator consistent with [school district/employer]an LEA's policies.

([g]5) A [P]rivate contractor[s] employed by [school districts]an LEA for student transportation shall[also] adhere strictly to [these provisions]this section in addition to the policies of the employer.

([2]6) A school bus operator's e[E]nd of bus route inspection shall include the following:

(a) [A]t the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall:

(i) complete the delivery[.];

(ii) stop and park the bus[.]; and

(iii) insure that all students are off the bus[.].

(b) [W]here possible, [this inspection shall]be completed at each school site when delivering students to school[.].

(c) [F]ollowing each from-school route of the day, the bus operator shall complete the same type of inspection described in subsection (6)(a) at a safe location a short distance from where the final student(s) left the bus[.]; and

(d) [H]if [children]a student is [are]found on the bus, [they]the student shall be immediately returned to [their]the student's assigned bus stop location or to an alternate location, consistent with [district]an LEA's policy[,] and with express permission from the parent[s(s)].

KEY: school, buses, school transportation

Date of Enactment or Last Substantive Amendment: **[June 9, 2014]2020**

Notice of Continuation: March 29, 2019

Authorizing, and Implemented or Interpreted Law: **Art X Sec 3; 53E-3-501(1)(d); 53E-3-401(3)**

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R277-726	Filing No.	52498
Ref (R no.):			

Agency Information

1. Department:	Utah State Board of Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:**

Statewide Online Education Program

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This rule is being amended to clarify responsibilities of providers and third party providers under the Statewide Online Education Program (SOEP) program.

4. Summary of the new rule or change:

This rule is being amended to clarify responsibilities of providers and third party providers under the SOEP program.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

This rule amendment is not expected to have material fiscal impact on state government revenues or expenditures. It revises provisions related to timelines and prioritization of enrollments in the SOEP. It also makes clarifying changes to better align the rule with current operating procedures for the SOEP. Because these changes bring this rule in line with current program operations and changes to the prioritization of enrollments only impact enrollments after December 1, these rule changes are not expected to have any significant fiscal impact.

B) Local governments:

This rule amendment is not expected to have material fiscal impact on local governments' revenues or expenditures. It revises provisions related to timelines and prioritization of enrollments in the SOEP. It also makes clarifying changes to better align the rule with current operating procedures for the SOEP. Because these changes bring this rule in line with current program operations and changes to the prioritization of enrollments only impact enrollments after December 1, these rule changes are not expected to have any significant fiscal impact.

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

This rule amendment is not expected to have material fiscal impact on small businesses' revenues or expenditures. It revises provisions related to timelines and prioritization of enrollments in the SOEP. It also makes clarifying changes to better align the rule with current operating procedures for the SOEP. Because these changes bring this rule in line with current program operations and changes to the prioritization of enrollments only impact enrollments after December 1,

these rule changes are not expected to have any significant fiscal impact.

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 amendment 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 amendment is not expected to have material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. It revises provisions related to timelines and prioritization of enrollments in the SOEP. It also makes clarifying changes to better align this rule with current operating procedures for the SOEP. Because these changes bring this rule in line with current program operations and changes to the prioritization of enrollments only impact enrollments after December 1, these rule changes are not expected to have any significant fiscal impact.

F) Compliance costs for affected persons:

There are no material compliance costs for affected persons. This rule amendment revises provisions related to timelines and prioritization of enrollments in the SOEP. It also makes clarifying changes to better align the rule with current operating procedures for the SOEP. Because these changes bring this rule in line with current program operations and changes to the prioritization of enrollments only impact enrollments after December 1, these rule changes are not expected to create any significant compliance costs for affected persons.

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

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0

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Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule amendment has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

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

Article X, Section 3	Section 53F-4-508	Section 53F-4-514
Subsection 53E-3-401(4)		

Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on: 03/09/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.

R277-726. Statewide Online Education Program.

R277-726-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53F-4-514, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53F-4-508, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

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

(2) The purpose of this rule is to:

(a) define necessary terms;
 (b) provide and describe a program registration agreement;
 and
 (c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

- (1) "Actively participates" means the student actively participates as defined by the provider.
- (2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.
- (3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.
- (b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.
- (4)(a) "Eligible student" means a student enrolled in grades 6-12 in a secondary environment in a course that:
 - (i) is offered by a public school; and
 - (ii) provides the student the opportunity to earn high school graduation credit.
- (b) "Eligible student" does not include a student enrolled in an adult education program.
- (5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).
- (6)(a) "Executed CCA" means a CCA that has been signed by all parties as provided in Subsection 53F-4-508(3)(h) and received by the Superintendent.
- (b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.
- (7) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (8) "Online course" means a course of instruction offered through the Statewide Online Education Program.
- (9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).
- (10) "Online course provider" or "provider" means:
 - (a) a school district school;
 - (b) a charter school;
 - (c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or
 - (d) a program of an institution of higher education described in Subsection 53F-4-504(3).
- (11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.
- (12) "Primary school of enrollment" means:
 - (a) a student's school of record within a primary LEA of enrollment; and
 - (b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

(16) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(17) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(18) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(19) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

- (i) graduation requirements;
- (ii) the student's plan for college and career readiness;
- (iii) the student's IEP;
- (iv) the student's Section 504 plan; or
- (v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if:

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(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(3) In accordance with Section 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local Student Information System.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15).

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

(6) A primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students.

(8) A primary school of enrollment shall provide participating students access to sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

(9)(a) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

- (i) early graduation status; or
- (ii) the non-supplanting nature of SOEP courses.

(10) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and credit for students participating prior to grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection R277-726-5(8) once a student completes grade 8.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 and Section 53F-4-514 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53F-4-505(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53F-4-415 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation; and
- (d) compliance with:

- (i) the IDEA;
- (ii) Section 504; and
- (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy all requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records[-]; and

(b) providing a parent or student documentation of educational performance, including:

- (i) test scores;
- (ii) grades;
- (iii) progress and performance measures; and
- (iv) completion of credit.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for all due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is [suspended] [inactive in a course] for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

(10) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

(1)[9]1(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(1)[4]2) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(1)[2]3) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(1)[3]4) A provider shall maintain [documentation of student work, including dates of submission, for program audit purposes] the following for at least five calendar years after the student exits the provider's or third party's program:

(a) test scores;

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(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures

(1[4]5)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

(1[5]6) A provider shall inform a student and the student's parent of expectations for active participation [in] prior to the inception of course work.

(1[6]7)(a) An LEA may participate in the program as a provider by offering a school or program consistent with the provisions of Rule R277-115 to a Utah secondary student[s] in grades 6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection (17)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and

(ii) record educator assignments consistent with Rule R277-484.

(1[7]8) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-520;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99;[and]

(ii) Rule R277-487; and

(iii) this Rule R277-726; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700

and R277-404;[and]

(f) shall not issue transcripts under the name of a third-party provider[.]; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section R277-512-7 either directly or through a partner school in accordance with Subsection (17)(b).

(1[8]9) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Sections [53F-4-514]53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(1[9]20) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, educator credentials, and other additional data consistent with Board directives and procedures and as requested.

(2[0]1) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(2[4]2)(a) A provider contracting with a third-party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third-party provider to ensure:

(i) a third-party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third-party provider is aligned with the Board's core standards and rules;

(iii) a third-party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

(i)[ii]y supervision of third-party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(2[2]3) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

(24) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a Notice of Enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly enrolled in the LEA but participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

(25) A provider is not required to independently verify:

(a) early graduation status; or

(b) the non-supplanting nature of SOEP courses.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(iv) claim the student in the resident school's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i) including in cases where the provider utilizes a third party provider for delivery of educational or other services.

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:[

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated:]

(a) Prior to December 1 annually, the Superintendent shall accommodate home school students with at least 50% of the total appropriation for home and private school students, unless the home school demand is less.

(b) After December 1 annually, until available funds are obligated, the Superintendent shall:

(i) receive and accept enrollment requests on a first come, first served basis; and

(ii) offer preference to home school students in the event demand exceeds available funding.

(3) If home school or private school student funds remain by [March]December 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

KEY: statewide online education program

Date of Enactment or Last Substantive Amendment: [May 23, 2019]2020

Notice of Continuation: December 15, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; [53A-15-1210]53F-4-510; [53A-15-1213]53F-4-514; [53A-1-401]53E-3-401

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code	R277-929	Filing No.	Ref (R no.):
		52499	

Agency Information

1. Department:	Utah State Board of Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

NOTICES OF PROPOSED RULES

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:

State Council on Military Children

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

Under the Interstate Compact on Educational Opportunity for Military Children, each state is required to have a state council to coordinate between government, schools, and the military on behalf of military families. Until the 2019 General Session, the Governor appointed the membership of the state council. However, under H.B. 387 in the 2019 General Session, the Legislature repealed the old requirement for the Governor to appoint the state council and enacted Section 53E-3-920.1, which directs the State Board of Education (Board) to organize the state council in accordance with the compact.

4. Summary of the new rule or change:

This new Rule R277-929 has been created to set out the basic requirements for the council.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule is not expected to have any independent fiscal impacts on state government revenues or expenditures. H.B. 387 (2019) directs the Board to create a state council to provide for coordination among governmental entities, local education agencies, and military installations concerning the state's participation in, and compliance with the Interstate Compact on Educational Opportunity for Military Children. This new rule sets out the basic requirements for this council.

B) Local governments:

This rule is not expected to have any independent fiscal impacts on local governments' revenues or expenditures. H.B. 387 (2019) directs the Board to create a state council to provide for coordination among governmental entities, local education agencies, and military installations concerning the state's participation in, and compliance with the Interstate Compact on Educational Opportunity for Military Children. This new rule sets out the basic requirements for this council.

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

This rule is not expected to have any independent fiscal impacts on small businesses' revenues or expenditures. H.B. 387 (2019) directs the Board to create a state council to provide for coordination among governmental entities, local education agencies, and military installations concerning the state's participation in, and compliance with the Interstate Compact on Educational Opportunity for Military Children. This new rule sets out the basic requirements for this council.

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 independent fiscal impacts on persons other than small businesses', businesses', or local government entities' revenues or expenditures. H.B. 387 (2019) directs the Board to create a state council to provide for coordination among governmental entities, local education agencies, and military installations concerning the state's participation in, and compliance with the Interstate Compact on Educational Opportunity for Military Children. This new rule sets out the basic requirements for this council.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. H.B. 387 (2019) directs the Board to create a state council to provide for coordination among governmental entities, local education agencies, and military installations concerning the state's participation in, and compliance with the Interstate Compact on Educational Opportunity for Military Children. This new rule sets out the basic requirements for this council.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
State Superintendent Sydnee Dickson has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate, revenue for non-small businesses. This rule has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53F-4-508	Section 53F-4-514
Subsection 53E-3-401(4)		

Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, Deputy and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/15/2020
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R277. Education, Administration.**R277-929. State Council on Military Children.****R277-929-1. 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) Section 53E-3-920.1, which requires the Board to create a state council in accordance with the Interstate Compact on Educational Opportunity for Military Children.

NOTICES OF PROPOSED RULES

(2) The purpose of this rule is to establish a state council for military children.

R277-929-2. Definitions.

(1) "Commissioner" means the compact commissioner appointed by the Governor in accordance with Section 53E-3-921.

(2) "Compact" means the Interstate Compact on Educational Opportunity for Military Children.

(3) "State council" means the State Council for Military Children created through this rule.

R277-929-3. Establishment of State Council.

(1) There is hereby created the State Council for Military Children.

(2) The state council shall:

(a) coordinate implementation of the compact amongst:

(i) state agencies;

(ii) LEAs; and

(iii) military installations;

(b) safeguard the interests of military impacted students within the state;

(c) make recommendations for laws and policies to benefit military impacted students; and

(d) promote awareness of compact rights and protections with military families.

(3)(a) The Superintendent shall invite the individuals identified in Subsection 53E-3-909(1) to participate in the state council.

(b) The Superintendent may invite other individuals with interest or expertise in working with military students to participate in the state council.

(4) The Superintendent shall coordinate with the Commissioner to schedule meetings of the state council.

(5) The state council shall meet on an annual basis or with such other frequency as may be required by compact rules.

(6) The Commissioner shall be responsible for filing all required reports with the national compact office.

KEY: state council, military, compact

Date of Enactment of Last Substantive Amendment: 2020

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R317-8-6	Filing No.
Ref (R no.):		52488

Agency Information

1. Department: Environmental Quality

Agency: Water Quality

Room no.: DEQ, Third Floor

Building: Multi Agency State Office Building

Street address: 195 North 1950 West

City, state: Salt Lake City, UT

Mailing address: PO Box 144870

City, state, zip: Salt Lake City, UT 84114

Contact person(s):

Name:	Phone:	Email:
Jeff Studenka	801-536-4395	jstudenka@utah.gov

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

General Information

2. Rule or section catchline:

Review Procedures

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The reason for this amendment is allow for Utah Pollutant Discharge Elimination System (UPDES) permit actions to be posted on the permitting authorities website in lieu of the local newspaper in compliance with 40 CFR 124.10(c)(2)(iv).

4. Summary of the new rule or change:

Subsection R317-8-6.5(3)(b) is being amended to include recent changes to the public notice policy . The Environmental Protection Agency (EPA) has finalized 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to provide public notice of permitting actions for UPDES major individual and general permits on the permitting authorities publicly available website in lieu of the newspaper publication requirement in 40 CFR 124.10(c)(2)(i).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The savings to the state budget will vary from year to year depending on the number of UPDES permit actions that require a newspaper publication. There will be approximately 20-25 UPDES permit actions per year with an average cost of \$300 per publication.

B) Local governments:

This rule is not expected to have any impacts on local governments' revenues or expenditures because this is only a requirement for a state program.

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

In Utah, it is estimated that there are 26 small business newspaper publishers (NAICS 51110). These companies will experience a combined revenue loss of

approximately \$2,000 for any UPDES permit action for any UPDES permitted facility in the local newspaper coverage area. This will vary from year to year.

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

In Utah, it is estimated that there are 3 non-small business newspaper publishers (NAICS 51110). These companies will experience a combined revenue loss of approximately \$4,000 for any UPDES permit action for any UPDES permitted facility in the local newspaper coverage area. This will vary from year to year.

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

This rule filing is not expected to have any impact on persons other than small businesses, non-small businesses, state, or local government entities because this is only a requirement for a state program and the newspaper publication cost was incurred solely by the Division of Water Quality.

F) Compliance costs for affected persons:

This rule filing is not expected to have any compliance cost for affected persons because this is only a requirement for a state program and the newspaper publication cost was incurred solely by the Division of Water Quality.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$2,000	\$2,000	\$2,000
Non-Small Businesses	\$4,000	\$4,000	\$4,000
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$6,000	\$6,000	\$6,000
Fiscal Benefits			
State Government	\$6,000	\$6,000	\$6,000

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$6,000	\$6,000	\$6,000
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

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

There would be a very small impact to the 29 small and non-small businesses newspaper publishers, with the majority of this impact to non-small businesses.

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

L. Scott Baird, Executive Director

Citation Information

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

Title 19, Chapter 5	Section 19-5-104	40 CFR 503
40 CFR 124		

Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/25/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After

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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:	Erica Brown Gaddis, Division Director	Date:	01/13/2020
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R317. Environmental Quality, Water Quality.

R317-8. Utah Pollutant Discharge Elimination System (UPDES).

R317-8-6. Review Procedures.

6.1 REVIEW OF THE APPLICATION

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Director an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Director at such time as the Director indicates in R317-8-6.3)

(2) The Director will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1; or for concentrated animal feeding operations, as required by R317-8-10.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Director within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

(6) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Director notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the Director shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Director intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or adjudicatory proceeding.

(3) If the Director tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Director tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 DRAFT PERMITS

(1) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Director tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Director's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Director tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Director decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

(a) All conditions under R317-8-4.1;

(b) All compliance schedules under R317-8-5.2;

(c) All monitoring requirements under R317-8-5.3;

(d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Director will give notice of opportunity for a public hearing, issue a final decision and respond to comments.

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 FACT SHEETS

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a public hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Director's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The Director will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A public hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under R317-8-6.5(1). Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

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- b. Soliciting persons for area lists from participants in past permit proceedings in that area; and
- c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.
6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.
7. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).
 - (b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Director will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity; or in lieu of the requirement for publication of a notice in a daily or weekly newspaper, the Director may publish all notices of activities described in Subsection R317-8-6.5(1)(a) to the Division of Water Quality's public website. If the Director selects this option for a draft permit, in addition to meeting the requirements in Subsection R317-8-6.5(4), the Director must post the draft permit and fact sheet on the website for the duration of the public comment period.
 - (c) In a manner constituting legal notice to the public under Utah law; and
 - (d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (4) Contents.
 - (a) All public notices issued under this part shall contain the following minimum information:
 1. Name and address of the office processing the permit action for which notice is being given;
 2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;
 3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;
 4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and
 5. A brief description of the comment procedures and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;
 6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for public hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 PUBLIC HEARINGS

(1) The Director shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Director also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds

supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Director's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Director. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time.

6.9 CONDITIONS REQUESTED BY THE CORPS OF ENGINEERS AND OTHER GOVERNMENT AGENCIES

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Director in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this rule. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The Director may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Director.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Director may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it

reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Director may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 ISSUANCE AND EFFECTIVE DATE OF PERMIT

After the close of the public comment period under R317-8-6.5, the Director will issue a final permit decision. The Director will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for contesting the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the Director shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this rule.

(c) The response to the comments shall be available to the public.

KEY: water pollution, discharge permits

Date of Enactment or Last Substantive Amendment: [July 1, 2013]2020

Notice of Continuation: September 12, 2017

Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503; 40 CFR 124

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NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R317 - 401	Filing No. 52487

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	DEQ, Third Floor	
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City	
Mailing address:	PO Box 144870	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	Phone:	Email:
Robert Beers	801-536-4380	rbeers@utah.gov

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

General Information

2. Rule or section catchline:
Graywater Systems
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
This filing is a repeal and reenact. The purpose of the reenacted rule is to promote water conservation and to incorporate up-to-date industry standards and practices.
4. Summary of the new rule or change:
Modified "Purpose", "Scope", and "Administrative" requirements for consistency with Rules R317-4 and R317-5. Expanded rule coverage to allow commercial use. Added definitions and sections for consistency with R317. Rearranged various sections to be consistent with other parts of Title R317. Added requirements that allow simple, low-maintenance gravity-flow systems. Added branch-drain system construction and installation section to address "Mulch Shield Basin" method of graywater dispersal and treatment. Added "Best Management Practices" and "Inspection and Maintenance Schedule" appendices as reference material.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The reenacted rule does not require construction or installation of any graywater system. Installation or construction of any graywater system at any state facilities is optional. Costs to the state would be subject to local health department rules, ordinances, and fees for permitting and initial installation costs only for facilities where a graywater system may be installed for water conservation purposes. Such costs are inestimable, but will vary by the size of the graywater system to be installed. Ongoing maintenance costs are anticipated to be an insignificant addition to typical landscaping costs.

Savings to the state may be realized through reduced charges for landscape watering by local utilities. Such savings will vary by the volume of water treated by the graywater system.

B) Local governments:

Costs are inestimable as participation in the program is optional. Participation in the program requires Division of Water Quality (Division) approval. A local health department may adopt ordinances to collect permitting or inspection fees.

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

Costs to small businesses are subject to local health department rules, ordinances, and fees for permitting and initial installation costs only for businesses that choose to install a graywater system for water conservation purposes. Such costs are inestimable, but will vary by the size of the graywater system to be installed. Ongoing maintenance costs are anticipated to be an insignificant addition to typical landscaping costs.

Savings to small businesses may be realized through reduced charges for landscape watering by local utilities. Such savings will vary by the volume of water treated by the graywater system.

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

Costs to non-small businesses are subject to local health department rules, ordinances, and fees for permitting and initial installation costs only for businesses that choose to install a graywater system for water conservation purposes. Such costs are inestimable, but will vary by the size of the graywater system to be installed. Ongoing maintenance costs are anticipated to be an insignificant addition to typical landscaping costs.

Savings to non-small businesses may be realized through reduced charges for landscape watering by local utilities. Such savings will vary by the volume of water treated by the graywater system.

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**):

Costs for residential property owners are subject to local health department rules, ordinances, and fees for permitting and initial installation costs only when they choose to install a graywater system for water conservation purposes. Such costs are inestimable, but will vary by the size and type of the graywater system installed. Ongoing maintenance costs are anticipated to be an insignificant addition to typical landscaping costs.

Savings to residential property owners may be realized through reduced charges by local culinary or irrigation utilities for landscape watering. Such savings will vary by the volume of water treated by the graywater system.

F) Compliance costs for affected persons:

Costs for business or residential property owners are subject to local health department rules, ordinances, and fees for permitting and initial installation costs only when they choose to install a graywater system for water conservation purposes. Such costs are inestimable, but will vary by the size and type of the graywater system installed. Ongoing maintenance costs are anticipated to be an insignificant addition to typical landscaping costs.

Savings for business or residential property owners may be realized through reduced charges by local culinary or irrigation utilities for landscape watering. Such savings will vary by the volume of water treated by the graywater system.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits			

H) Department head approval of regulatory impact analysis:

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

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

The Division does not anticipate any fiscal impact from this rule amendment.

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

L. Scott Baird, Executive Director

Citation Information

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

Title 19, Chapter 5

Public Notice Information

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

A) Comments will be accepted 03/02/2020 until:

10. This rule change MAY become effective on: 03/25/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After

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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:	Erica Brown Gaddis, Division Director	Date:	01/13/2020
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R317. Environmental Quality, Water Quality.

R317-401. Graywater Systems.

R317-401-1. General.

- (a) This rule shall apply to the construction, installation, modification and repair of graywater systems for subsurface landscape irrigation for single family residences.
- (b) Nothing contained in this rule shall be construed to prevent the permitting local health department from:
- (i) adopting stricter requirements than those contained herein;
 - (ii) prohibiting graywater systems; and
 - (iii) assessment of fees for administration of graywater systems.
- (c) Graywater shall not be:
- (i) applied above the land surface;
 - (ii) applied to vegetable gardens except where graywater is not likely to have direct contact with the edible part, whether the fruit will be processed or not;
 - (iii) allowed to surface; or
 - (iv) discharged directly into or reach any storm sewer system or any waters of the State.
- (d) It shall be unlawful for any person to construct, install or modify, or cause to be constructed, installed or modified any graywater system in a building or on a given lot without first obtaining a permit to do such work from the local health department.
- (e) The local health department may require the graywater system in its jurisdiction, be placed under:
- (i) an umbrella of a management district for the purposes of operation, maintenance and repairs;
 - (ii) a third party operation, maintenance and repair contract at the expense of the permittee with a requirement of notification by the permittee and the contractor to the local health department, of the termination of such services.

R317-401-2. Definitions.

- (a) "Graywater" is untreated wastewater, which has not come into contact with toilet waste. Graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, laundry tubs, etc., and does not include wastewater from kitchen sinks, photo lab sinks, dishwashers, garage floor drains, or other hazardous chemicals.
- (b) Surfacing of graywater means the ponding, running off, or other release of graywater to or from the land surface.
- (c) "The local health department" means a city county or multi county local health department established under Title 26A, which has been given approval by the Director to issue permits for graywater systems within its jurisdiction.
- (d) "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a

sleeping area. It may include, but not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

R317-401-3. Administrative Requirements.

- (a) The local health department having jurisdiction must obtain approval from the Director to administer a graywater systems program, as outlined in this section, before permitting graywater systems.
- (b) The local health department request for approval must include a description of its plan to properly manage these systems to protect public health. This plan must include:
- (i) Documentation of:
 - (1) the adequacy of staff resources to manage the increased work load;
 - (2) the technical capability to administer the new systems including any training plans which are needed;
 - (3) the Local Board of Health and County Commission support this request; and
 - (4) the county's legal authority to implement and enforce correction of malfunctioning systems and its commitment to exercise this authority.
 - (ii) An agreement to:
 - (1) advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;
 - (2) advise the building permitting agency of the approved graywater system on the property;
 - (3) provide oversight of installed systems;
 - (4) record the existence of the system on the deed of ownership for that property;
 - (5) issue a renewable operating permit at a frequency not exceeding five years with inspection of the permitted systems before renewal; or, inspect annually the greater of 20 per cent of all installed system or the minimum of ten installed systems; and
 - (6) maintain records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as, but not limited to, overflow, surfacing, ponding and nuisance.

R317-401-4. Permitting or Approval Requirements.

- (a) Designer certified at Level 3, in accordance with the requirements of R317-11, shall design the graywater systems.
- (b) The local health department may require the following information with or in the plot plan before a permit is issued for a graywater system:
- (i) plot plan drawn to scale, completely dimensioned, showing lot lines and structures, direction and slope of the ground, location of all present or proposed retaining walls, drainage channels, water supply lines, wells, paved areas and structures on the plot, other utilities, easements, number of bedrooms and plumbing fixtures plan in each structure, location of onsite wastewater system and replacement area of the onsite wastewater system, or building sewer connecting to a public sewer, and location of the proposed graywater system;
 - (ii) a log of soil formations and identification of the maximum anticipated ground water level as determined by the minimum of one test hole, dug in close proximity, two feet below the bottom of the subsurface irrigation field or drip irrigation area together with a statement of types of soil based on soil classification at the proposed site. Soil and groundwater evaluations will be conducted by professionals fulfilling the requirements of R317-11;

(iii) details of construction necessary to ensure compliance with the requirements of this rule together with full description of the complete installation including installation methods, construction and materials, as required by the local health department; and
 (iv) other pertinent information the local health department may deem appropriate.

(c) The installed graywater system shall be operated only after receiving a written approval or an authorization from the local health department after the local health department has made the final construction inspection.

(d) The local health department will require written operation and maintenance procedures including checklists and maintenance instructions from the designer.

(e) No graywater system, or part thereof, shall be located on any lot other than the lot which is the site of the building or structure which discharges the graywater unless, when approved by the local health department, a perpetual utility easement and right of way is established on an adjacent or nearby lot.

(f) Onsite wastewater systems existing or to be constructed on a given lot shall comply with the requirements of R317.4 or more restrictive local requirements. The capacity of the onsite wastewater system, including required future areas, shall not be decreased by the existence or proposed installation of a graywater system servicing a given lot.

(g) No potable water connection will be made to the graywater system without an air gap or a reduced pressure principle backflow prevention assembly for cross connection control, in accordance with R309.105.

(h) When abandoning a graywater system;

(i) the owner of the real property on which such system is located shall render it safe by having the surge tank pumped out only in a manner approved by the health department;

(ii) the surge tank shall be filled completely with earth, sand or gravel within 30 days;

(iii) the surge tank may also be removed within 30 days, at the owner's discretion;

(iv) the approving local health department shall be notified at least 30 days before the planned abandonment.

R317.401.5. Design of Graywater Systems.

(a) The basis of design for a graywater system shall be as follows:

TABLE 1
Basis of Design

Number of Bedrooms	Flow, gallons per day
Minimum two bedrooms	120
Three bedrooms	160
Each additional bedroom	40

(b) No graywater system or part thereof shall be located at any point having less than the minimum distances indicated as follows:

TABLE 2
Separation Distances

Minimum Horizontal Distance (in feet) From	Surge Tank	Subsurface or Drip Irrigation Field
Buildings or Structures (1)	5 feet (2)	2 feet
Property line adjoining private property	5 feet	5 feet

Public Drinking Water Sources (3)		(4)	(4)
<u>Non-public Drinking Water</u>			
<u>Sources</u>			
Protected (grouted) source	50 feet	100 feet	
Unprotected (ungrounded) source	50 feet (5)	200 feet (5)	
Streams, ditches and lakes (3)	25 feet	100 feet (6)	
Seepage pits	5 feet	10 feet	
<u>Absorption System and replacement area</u>			
Septic tank	5 feet	10 feet	
Culinary water supply line	none	5 feet	
	10 feet	10 feet (7)	

Footnotes:

(1) Including porches and steps, whether covered or uncovered, but does not include carports, covered walks, driveways and similar structures.

(2) For above ground tanks the local health department may allow less than five feet separation.

(3) As defined in R309

(4) Recommended separation distances will comply with the Source Water Protection requirements R309.600 and 605.

(5) Recommended separation distance may increase at the discretion of the local health department for adequate public health protection.

(6) Lining or enclosing watercourse or location above irrigation area may justify reduced separation at the discretion of the local health department.

(7) For parallel construction or for crossing requires an approval of the local health department.

(e) Surge Tank

(i) Plans for surge tanks shall include dimensions, structural, bracing and connection details, and a certification of structural suitability for the intended installation from the manufacturer.

(ii) Surge tanks shall be:

(A) at least 250 gallons in volumetric capacity to provide settling of solids, accumulation of sludge and scum unless justified with a mass balance of inflow and outflow and type of distribution for irrigation;

(B) vented to the surface with a locking gasketed access opening, or approved equivalent, to allow for inspection and cleaning;

(C) constructed of structurally durable materials to withstand all expected physical forces, and not subject to excessive corrosion or decay;

(D) watertight;

(E) anchored against overturning;

(F) installed below ground on dry, level, well compacted soil; in a dry well on compacted soil; or above ground on a level, four-inch thick concrete slab;

(G) Permanently marked showing the rated capacity, and "GRAYWATER IRRIGATION SYSTEM, DANGER UNSAFE WATER" on the unit;

(H) provided with an overflow pipe;

(I) of diameter at least equal to that of the inlet pipe diameter;

(II) connected permanently to sanitary sewer or to septic tank; and

(III) equipped with a check valve, not a shut off valve—to prevent backflow from sewer or septic tank.

(L) provided with a drain pipe of diameter at least equal to that of the inlet pipe diameter;

(J) provided with a vent pipe in conformance with the requirements of the International Plumbing Code; and

(K) provided with unions and fittings for all piping in conformance with the requirements of the International Plumbing Code.

(d) Valves and Piping

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- (i) Graywater piping discharging into a surge tank or having a direct connection to a sanitary drain or sewer piping shall be downstream of an approved water seal type trap(s). If no such trap(s) exists, an approved vented running trap shall be installed upstream of the connection to protect the building from any possible waste or sewer gases.
- (ii) Vents and venting shall meet the requirements of the International Plumbing Code.
- (iii) All graywater piping shall be marked or shall have a continuous tape marked with the words: DANGER — UNSAFE WATER.
- (iv) All valves, including the three way valve, shall be readily accessible.
- (v) The design shall include necessary types of valves for isolation storage tank, irrigation zones and connection to a sanitary sewer or an onsite wastewater system.

R317-401-6. Irrigation Fields.

- (a) Each irrigation zone shall have a minimum effective irrigation area for the type of soil and absorption characteristics.
- (b) The area of the irrigation field shall be equal to the aggregate length of the perforated pipe sections within the irrigation zone times the width of the proposed trench. The required square footage shall be determined as follows:

TABLE 3
Subsurface Irrigation Field Design

Soil Characteristics	Subsurface Irrigation Field area Loading, gallons of graywater per day per square foot
Coarse Sand or gravel	5
Fine Sand	4
Sandy Loam	2.5
Sandy Clay	1.6
Clay with considerable sand or gravel	1.1
Clay with sand or gravel	0.8

TABLE 4
Drip Irrigation System Design

Soil Characteristics	Drip Irrigation System Maximum emitter discharge, gallons per day	Minimum number of emitters per gallon per day of graywater
Coarse Sand or gravel	1.8	0.6
Fine Sand	1.4	0.7
Sandy Loam	1.2	0.9
Sandy Clay	0.9	1.1
Clay with considerable sand or gravel	0.6	1.6
Clay with sand or gravel	0.5	2.0

(c) No irrigation point shall be within two vertical feet of the maximum groundwater table. The applicant shall supply evidence of ground water depth to the satisfaction of the local health department.

(d) Subsurface drip irrigation system.

(i) Minimum 140 mesh (115 micron) filter with a capacity of 25 gallons per minute, or equivalent filtration, sized appropriately to maintain the filtration rate, shall be used.

(ii) The filter backwash and flush discharge shall be captured, contained and disposed of to the sewer system, septic tank,

or, with approval of the local health department, in a dry well sized to accept all the backwash and flush discharge water. Filter backwash water and flush water shall not be used for any purpose. Sanitary procedures shall be followed when handling filter backwash and flush discharge of graywater.

(iii) Emitters recommended by the manufacturer shall be resistant to root intrusion, and suitable for subsurface and graywater use.

(iv) Each irrigation zone shall be designed to include no less than the number of emitters specified in this rule.

(v) Minimum spacing between emitters should be 14 inches in any direction, or as recommended by the manufacturer.

(vi) The system design shall provide user controls, such as valves, switches, timers, and other controllers as appropriate, to rotate the distribution of graywater between irrigation zones.

(vii) All drip irrigation supply lines shall be:

(A) polyethylene tubing or PVC class 200 pipe or better and schedule 40 fittings;

(B) With solvent cemented joints, inspected and pressure tested at 40 pounds per square inch and shown to be drip tight for five minutes, before burial; and

(C) buried at a minimum depth of six inches. Drip feeder lines can be polyethylene or flexible PVC tubing and shall be covered to a minimum depth of six inches.

(viii) Where pressure at the discharge side of the pump exceeds 20 pounds per square inch, a pressure reducing valve able to maintain downstream pressure no greater than 20 pounds per square inch shall be installed downstream from the pump and before any emission device.

(ix) Each irrigation zone shall include a flush valve/anti-siphon valve to prevent back siphonage of water and soil.

(e) Subsurface Irrigation Field

(i) Perforated sections shall be a minimum three inch diameter and shall be constructed of perforated high density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials, provided that sufficient openings are available for distribution of the graywater in the trench area. Material, construction and perforation of the piping shall be in compliance with the requirements of the International Plumbing Code.

(ii) Clean stone, gravel, or similar filter material acceptable to the local health department, and varying in size from 3/4 inch to 2 1/2 inches, shall be placed in the trench to the depth and grade required by this section. Perforated sections shall be laid on the filter material. The perforated sections shall then be covered with filter material to the minimum depth required by this section. The filter material shall then be covered with landscape filter fabric or similar porous material to prevent closure of voids with earth backfill.

(iii) No earth backfill shall be placed over the filter material cover until after inspection and approval of the local health department.

(iv) Subsurface Irrigation fields shall be constructed as follows:

TABLE 5
Subsurface Irrigation Field Construction Details

Description	Minimum	Maximum
Number of drain lines per subsurface irrigation zone	one	
Length of each perforated line, feet		100
Bottom width of trench, inches	6	18
Total depth of trench, inches	12	
Spacing of lines, center to center, feet	4	
Depth of earth cover on top of gravel, inches		4

Depth of filter material cover over lines, inches	2
Depth of filter material beneath lines, inches	3
Grade of perforated lines, Inches per 100 feet	Level 4

(f) Construction, Inspection and Testing

- (i) Installation shall conform to the equipment and installation methods described in the approved plans.
- (ii) The manufacturer of all system components shall be properly identified.
- (iii) Surge tanks shall be filled with water to the overflow line prior to and during construction inspection. All seams and joints shall be left exposed and the tank shall remain watertight.
- (iv) The irrigation field shall be installed in the area which has soils similar to the soils which have been evaluated, and has absorption rate corresponding to the given soil classification.
- (v) A graywater stub out may be allowed for future construction, provided it is capped prior to the connection to the installed irrigation lines and landscaping. Stub out shall be permanently marked: GRAYWATER STUB OUT, DANGER UNSAFE WATER.
- (vi) A flow test shall be performed throughout the system, from surge tank to the point of graywater irrigation. All lines and components shall be watertight.

] 1.1. Authorization.

This rule is administered by the Division authorized by Title 19 Chapter 5.

1.2. Purpose.

The purpose of this rule is to protect public health and environment from potential adverse effects from graywater use while promoting water conservation by facilitating reuse of graywater for landscape irrigation within the boundaries of Utah.

1.3. Scope.

This rule shall apply to the design, installation, modification, discharge, use and repair of graywater systems for subsurface landscape irrigation for residential and non-residential buildings.

1.4. Jurisdiction.

Local health departments have jurisdiction to administer this rule. Nothing contained in this rule shall be construed to prevent a local health department from:

- (a) adopting stricter requirements than those contained in Rule R317-401;
- (b) prohibiting any graywater system within its jurisdiction;
- (c) assessing fees for administration of this rule;
- (d) receiving a request for a variance, conducting a review, and granting either an approval or denial; or
- (e) requiring graywater systems within its jurisdiction be placed under an umbrella of a:
 - (i) responsible management entity overseen by the local health department;
 - (ii) contract service provider overseen by the local health department; or
 - (iii) management district or body politic created by the county for the purpose of operation, maintenance and repairs of all graywater systems.

1.5. Graywater System Administration.

- (a) The local health department having jurisdiction shall obtain approval from the Director to administer a graywater systems program before permitting any graywater system.

(b) The local health department request for approval should include a description of its plan to properly manage graywater systems to protect public health. This plan should include:

(i) Documentation of:

- (A) the adequacy of staff resources to manage the increased work load;
- (B) the technical capability to administer the new program including any training plans that are needed;
- (C) local board of health support for this request; and
- (D) the county's or the health jurisdiction's legal authority to implement and enforce correction of any malfunctioning system and its commitment to exercise this authority.

(ii) An agreement to:

- (A) advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;
- (B) advise the local building authority of the approved graywater system on the property;
- (C) provide oversight of installed systems;
- (D) record the existence of any graywater system on the deed of ownership for that property;
- (E) implement a graywater system operating permit program consisting of:

(1) Tier 1 system operating permits may be issued at the discretion of the regulatory authority; and

(2) Tier 2 system operating permits issued with a renewal frequency not exceeding five years and inspection by the regulatory authority prior to renewal, or annual inspections by the regulatory authority consisting of the greater of 20 per cent of all installed systems or the minimum of ten installed systems;

(F) maintain records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as overflow, surfacing, ponding and nuisance; and

(G) submit an annual report to the Division on or before September 1 for the previous State of Utah fiscal year's activities showing:

- (1) the type and number of graywater systems approved, installed, modified, repaired, failed, and inspected;
- (2) a summary of enforcement actions taken, pending, and resolved;
- (3) number of variances granted or denied; and
- (4) a summary of any water quality performance data collected.

R317-401-2. Definitions.

2.1 Definitions found in Rule R317-4 apply to graywater systems except where specifically replaced in Section R317-401-2:

"Aggregate" means regulatory authority approved clean porous material used to disperse graywater.

"Backflow" means the phenomena that occur when the customer's pressure is higher than the supply pressure. This could be caused by an unprotected cross connection between a drinking water supply and a pressurized irrigation system, a boiler, a pressurized industrial process, elevation differences, air or steam pressure, use of booster pumps or any other source of pressure.

"Bedroom" means any portion of a dwelling that is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include a den, study, sewing room, or sleeping

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loft. Unfinished basements shall be counted as a minimum of one additional bedroom.

"Distribution zone" means any portion of a graywater irrigation system that discharges graywater to a specific area for irrigation purposes.

"Graywater" means wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, or laundry tubs. Graywater does not include wastewater from toilets, kitchen sinks, photo lab sinks, dishwashers, water softeners, garage floor drains, or other sources that pose a public health hazard.

"Irrigation system" means any network of pipes, drip irrigation lines, or mulch shields used to distribute graywater in a manner suitable for subsurface landscape irrigation.

"Mulch Shield" means a perforated vessel into which graywater is discharged and is temporarily detained before draining into a mulch basin.

"Non-Residential" means a building that produces domestic wastewater, and is not a single-family dwelling.

"Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

"Residential" means a single-family or multi-family dwelling that produces domestic wastewater.

"Stub-out" means a plumbed connection located with fixtures in compliance with Rule R317-401 for diversion of graywater from wastewater plumbing. A stub-out shall be connected to an approved graywater collection system or capped for future connection.

"Surge Tank" means a water-tight tank used to equalize peaks in graywater pressure and flow so that graywater may be dispersed gradually over time. A surge tank is intended only for temporary storage of graywater during periods of peak flow.

"Three-way diverter valve" means a valve that allows the operator to send graywater to the graywater system or to the building sewer.

"Tier 1 system" means a gravity-fed graywater system that does not include any surge tank, pretreatment, or pressurized components. A Tier 1 system may be appropriate for retrofit situations. A Tier 1 system is intended to be simple to operate and can be easily disconnected during winter months or other periods when the system may not be in use.

"Tier 2 system" means a graywater system that employs a surge tank, pretreatment, drip line irrigation system, or pressurized components.

"Unapproved graywater system" means any graywater system that is deemed by the regulatory authority to have been installed, repaired, or altered without required regulatory oversight, permit, or inspection.

R317-401-3. Failure to Comply, Prohibitions, and Abandonment of Graywater Systems.

3.1. Failure to Comply with Rule.

Any person failing to comply with this rule shall be subject to enforcement action as specified in Sections 19-5-115 and 26A-1-123.

3.2. Prohibitions.

It shall be unlawful for any person to construct, install, modify, or cause to be constructed, installed or modified any graywater system in a building or on a given lot without first obtaining a permit to do such work.

(a) Graywater may not be:

- (i) discharged on the land surface;

(ii) applied to vegetable gardens except where graywater is not likely to have direct contact with the edible part, whether the fruit will be processed or not;

(iii) used in spray irrigation;

(iv) discharged directly into or reach any storm sewer system or any waters of the State; or

(v) allowed to surface, pond, or runoff.

(b) A graywater system shall be located on the same lot as the building served unless, when approved by the regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot, which includes rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement.

(c) A graywater system may not be approved as the sole source of water disposal. Connection to an approved sewer or onsite wastewater system is required.

(d) The capacity of any onsite wastewater system, including required future replacement areas, shall not be decreased by the existence or proposed installation of a graywater system servicing a given lot.

(e) A potable water connection may not be made to any graywater system.

(f) Graywater components within the building shall comply with the International Plumbing Code and local building code.

3.3. Abandonment of Graywater Systems.

(a) The regulatory authority shall be notified at least 30 days before the planned abandonment of any graywater system.

(b) Upon approval from the local health department having jurisdiction, the owner of the real property on which a graywater system is located shall have any existing surge tank:

(i) pumped out only in a manner approved by the regulatory authority within 30 days;

(ii) filled completely with earth, sand, or gravel within 30 days; or

(iii) removed within 30 days.

(c) Upon approval from the regulatory authority, the owner of the real property on which a graywater system is located shall disconnect the abandoned graywater system from any buildings served by the system.

R317-401-4. Feasibility Determination and Design Requirements.

4.1. General Criteria for Determining Graywater System Feasibility.

The regulatory authority shall determine the feasibility of using a graywater system. The regulatory authority shall review required information for any existing or proposed system to determine graywater system feasibility. The required information shall be prepared at the owner's expense by, or under the supervision of, a qualified person approved by the regulatory authority. Required information shall include:

(a) name and address of the property owner and person requesting feasibility;

(b) the county recorder's plat and parcel ID and situs address if available;

(c) the location and distance to the nearest sewer, owner of sewer, whether property is located within the sewer service boundary, and size of sewer; and

(d) a statement of proposed use if other than a single-family dwelling.

4.2. Soil and Site Evaluation.

Soil and groundwater evaluations shall be conducted by professionals fulfilling the requirements of Rule R317-11.

(a) Soil classification and maximum ground water determination shall be:

(i) performed using a minimum of one test hole;

(ii) dug in close proximity to the proposed subsurface distribution zone;

(iii) be at least two feet below the bottom of the proposed subsurface distribution zone; and

(iv) evaluated and reported using the USDA Soil Texture Classification method.

(b) Soil sample test results may also be accepted from a qualified soil analysis lab at the discretion of the local health department.

4.3. Plan Review and Permitting.

Plans and specifications for the construction, alteration, extension, or change of use for any graywater system shall be submitted to the regulatory authority. The regulatory authority shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, a construction permit shall be issued to the property owner. Construction of any graywater system may not commence until the regulatory authority has issued a construction permit.

(a) System Designer Qualifications.

Graywater system design requirements are determined by the complexity of the system. Systems shall be permitted by tiers.

(i) a Tier 1 System designer shall be certified at a Level 2 as defined by R317-11.

(ii) a Tier 2 System designer shall be certified at a Level 3 as defined by R317-11.

(b) Information Required.

Plans submitted for review shall be drawn to scale, 1" = 10', 20' or 30', or other scale as approved by the regulatory authority. Plans shall be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Depending on the individual site and circumstances, or as determined by the regulatory authority, required information may include:

(i) applicant information consisting of:

(A) the name, current address, and telephone number of the applicant;

(B) complete address, legal description of the property, or both to be served by the graywater system.

(ii) a graywater irrigation system site plan consisting of:

(A) submittal date of plan;

(B) North arrow;

(C) lot size and dimensions;

(D) ground surface contours, preferably at 2 foot intervals, of both the original and proposed final grades of the property, or relative elevations using an established bench mark;

(E) maximum number of bedrooms, including statement of whether a finished or unfinished basement will be provided, the number of fixtures proposed to be connected to graywater system, or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day;

(F) location and dimensions of paved and unpaved driveways, roadways and parking areas;

(G) proposed location and dimensions of the essential components of the graywater system;

(H) location of all soil exploration pits and all percolation test holes;

(I) location of any present or proposed retaining walls, drainage channels, or buildings;

(J) location of building sewer and water service line to serve the building;

(K) location of easements or drainage right-of-ways affecting the property;

(L) location of all intermittent or year-round streams, ditches, watercourses, ponds, subsurface drains, etc. within 100 feet of proposed graywater system;

(M) location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of the graywater system, and of all existing or proposed public water supply sources within 1500 feet of the graywater system and associated source protection zones;

(N) distance to nearest public water main and size of main;

(O) distance to nearest public sewer, size of sewer, and whether accessible by gravity;

(P) location of any onsite wastewater system, any replacement area, and location of the proposed graywater system;

(iii) a statement with the site plan indicating the source of culinary water supply, whether a well, spring, non-public or public system, and its location and distance from any graywater systems within 200 feet. The regulatory authority may not approve a graywater irrigation system if:

(A) the applicant has a private culinary system; and

(B) lacks a water right with use type designated for irrigation by the Utah Division of Water Rights.

(iv) relative elevations, using an established bench mark, including:

(A) building drain outlet;

(B) the outlet of any graywater system components;

(C) the final ground surface over the graywater system.

(v) Details for the graywater system design site, plans, and specifications as listed in Section R317-401-5, including:

(A) schedule or grade, material, diameter, and minimum slope of graywater sewer and distribution pipes;

(B) surge tank capacity, design, cross sections, etc., materials, and dimensions, if applicable. If tank is commercially manufactured, the name and address of manufacturer shall be provided;

(C) subsurface graywater discharge system details, including:

(1) details of mulch shields and mulch shield basins, if provided;

(2) description and details for method of graywater dispersal, whether aggregate or chambers;

(3) length, slope, and spacing of each absorption system component;

(4) maximum slope across ground surface of absorption system area;

(5) distance of graywater discharge system from trees, cut banks, fills, or subsurface drains;

(6) cross section of graywater discharge system showing the:

(I) depth and width of graywater discharge system excavation;

(II) depth of distribution pipe;

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- (III) depth of aggregate;
- (IV) barrier material, i.e. synthetic filter fabric, straw, etc., used to separate aggregate from cover; and
- (V) depth of cover; and
- (7) other pertinent information.

4.4. Plans Submitted.

(a) All applicants requesting plan approval for a graywater system shall submit a sufficient number of copies of required information to enable the regulatory authority to retain one copy as a permanent record.

(b) Applications may be rejected if proper information is not submitted.

R317-401-5. Design of Graywater Systems.

5.1. The basis of design for a graywater system shall be:

- (a) according to Table 1 or Table 2 for residential usage;

TABLE 1

Design Flow, Entire Single Family Dwelling

Number of Bedrooms	Flow, gallons per day
Two Bedrooms (Minimum)	160
Three Bedrooms	240
Each Additional Bedroom	40

TABLE 2

Design Flow, Single Fixture

Fixture	Flow, gallons per day/bedroom
Washing Machine	30
Shower/Bath Tub	50
Hand Wash Basin	5
Other Sources	Shall be sized by a qualified designer

(b) non-residential usage shall be sized by a certified designer and evaluated on a case-by-case basis by the regulatory authority;

(c) all materials shall meet the requirements of the International Plumbing Code and local building code; and

(d) no graywater system or any part thereof shall be located at any point having less than the minimum distances indicated in Table 3;

TABLE 3

Separation Distances

Minimum Horizontal Distance From(ft)	Surge Tank	Subsurface Discharge
Building or Structures (a)	5 (b)	2
Property Line	5	5
Public Drinking Water Sources (c)	(d)	(d)
Non-public Drinking Water Sources		
Protected (grouted) Source	50	100
Unprotected (ungROUTED) Source	50 (e)	200 (f)
Streams, Ditches, and Lakes (c)	25	100 (f)
Seepage Pits	5	10
Absorption System and Replacement Area	5	10
Septic Tank	5	5
Culinary Water Supply Line	10	10 (g)

Notes:

- (a) Including porches and steps, whether covered or uncovered, but does not include carports, covered walks, driveways and similar structures.
- (b) For above ground tanks the regulatory authority may allow less than five feet separation.

- (c) As defined in Rules R309-600 and R309-605.
- (d) Recommended separation distances will comply with the Source Water Protection requirements listed in Rules R309-600 and R309-605.
- (e) Recommended separation distance may increase at the discretion of the regulatory authority for the purpose of protecting public health.
- (f) Lining or enclosing watercourse or location above graywater discharge area may justify reduced separation distance(s) at the discretion of the regulatory authority.
- (g) As defined in Rule R309-550

5.2. Surge Tank

(a) a surge tank is required for a Tier 2 graywater system. Plans for a surge tank shall include dimensions, structural, bracing and connection details, and a certification of structural suitability for the intended installation from the manufacturer.

(b) a surge tank shall be:

(i) a minimum of 250 gallons in volumetric capacity to provide settling of solids, accumulation of sludge and scum unless justified with a mass balance of inflow and outflow and type of distribution for graywater discharge;

(ii) accessible to the surface with a locking, gasketed access opening, or approved equivalent, to allow for inspection and cleaning;

(iii) constructed of structurally durable materials to withstand all expected physical forces, and not subject to excessive corrosion or decay;

(iv) watertight;

(v) anchored against overturning;

(vi) installed below ground on dry, level, well-compacted soil or above ground on a level, four-inch thick concrete slab;

(vii) permanently marked showing the rated capacity, and the words GRAYWATER IRRIGATION SYSTEM, DANGER - UNSAFE WATER on the unit;

(viii) provided with an overflow pipe;

(A) of diameter at least equal to that of the inlet pipe diameter;

(B) connected permanently to the building sewer;

(C) equipped with a check valve or backwater valve, accessible for cleaning and maintenance, to prevent backflow from building sewer; and

(D) which may not include a shut-off valve.

(ix) provided with a drain pipe of diameter at least equal to that of the inlet pipe diameter; and

(x) provided with a vent pipe in conformance with the requirements of the International Plumbing Code and local building code;

5.3. Valves and Piping.

(a) Graywater piping that discharges into a surge tank or has a direct connection to any sanitary drain or sewer piping shall be downstream of an approved water seal type trap. If no such trap exists, an approved vented running trap shall be installed upstream of the connection to protect the building from any possible waste or sewer gases.

(b) Vents, venting, and piping shall meet the requirements of the International Plumbing Code and local building code.

(c) All graywater piping shall be purple or shall have a continuous marking with the words DANGER - UNSAFE WATER.

(d) A graywater system shall have a 3-way diverter valve at any stub-out connection. A 3-way diverter valve shall be connected to a fixture or inlet, an approved graywater system, and building sewer.

(e) Any 3-way diverter valve shall be readily accessible and clearly marked to indicate directional flow to graywater system or building sewer.

R317-401-6. Construction and Installation of Irrigation Systems.

6.1. Each distribution zone shall have a minimum effective irrigation area for the soil characteristics and vegetation needs.

6.2. The area of a distribution zone shall be equal to the total length of the perforated pipe sections within the distribution zone multiplied by the width of the proposed trench. The required square footage shall be determined using Table 4 or Table 5.

TABLE 4

Subsurface Irrigation System Design

Soil Characteristics	Subsurface Irrigation System Area Loading, gallons of graywater per day per square foot
Coarse Sand or Gravel	5
Fine Sand	4
Sandy Loam	2.5
Sandy Clay Loam	1.6
Clay Loam	1.1
Clay with Sand or Gravel	0.8

TABLE 5

Drip Irrigation System Design

Soil Characteristics	Minimum Number of Emitters, per gallon per day	Maximum Emitter Discharge, gallons per day
Coarse Sand or Gravel	0.6	1.8
Fine Sand	0.7	1.4
Sandy Loam	0.9	1.2
Sandy Clay Loam	1.1	0.9
Clay Loam	1.6	0.6
Clay with Sand or Gravel	2.0	0.5

6.3. The lowest point of any distribution zone shall be at least two vertical feet above the maximum groundwater table. Applicant shall provide sufficient groundwater data to the regulatory authority. Subsection R317-4-4.1.B.4 may be used to determine maximum groundwater elevation.

6.4. Subsurface drip irrigation system.

Subsurface drip irrigation systems shall be constructed so that:

(a) A 140 mesh or 115 micron filter with a capacity of 25 gallons per minute minimum shall be used to prevent drip irrigation system clogging;

(b) The filter backwash and flush discharge shall be captured, contained, and discharged to the sewer system or approved onsite wastewater system;

(i) filter backwash water and flush water may not be used for any purpose;

(ii) sanitary procedures shall be followed when handling filter backwash and flush discharge of graywater;

(c) Emitters recommended by the manufacturer shall be resistant to root intrusion and suitable for subsurface and graywater dispersal;

(d) Each irrigation zone shall include the minimum number of emitters required to meet the daily graywater flows as defined in Table 5;

(e) Minimum spacing between emitters should be 12 inches in any direction, or as recommended by the manufacturer;

(f) The system shall provide user controls such as valves, switches, timers, and other controls as appropriate, to rotate the discharge of graywater between distribution zones;

(g) All drip irrigation force mains and manifolds shall:

(i) meet requirements of Table 7;

(ii) be connected with schedule 40 fittings;

(iii) be connected as per manufacturer's specifications, inspected and pressure tested at 40 pounds per square inch and shown to be drip tight for five minutes, before burial; and

(iv) be buried at a minimum depth of six inches;

(h) Lateral distribution lines may be PE or flexible PVC tubing and shall be covered to a minimum depth of six inches;

(i) Pressure at the emitter shall meet the manufacturer's recommendations; and

(j) Each distribution zone shall include a flush valve, and where applicable, an anti-siphon valve to prevent back siphonage of water and soil.

6.5. Subsurface Irrigation System.

Subsurface irrigation systems consisting of pipe and gravel or chambers may be used for dispersal of graywater.

(a) Perforated pipe sections shall be a minimum three-inch diameter and shall be constructed of perforated high-density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials as required in Table 7, provided that sufficient openings are available for distribution of the graywater in the trench area. Material, construction and perforation of the piping shall be in compliance with the requirements of the International Plumbing Code and local building code.

(b) A subsurface irrigation system shall be constructed in accordance with Table 6.

(c) Aggregate shall be placed in the trench to the depth and grade required by Table 6. The aggregate shall then be covered with barrier material to prevent closure of voids with backfill.

(d) Chamber systems shall be installed as per manufacturer's specifications. All chambers shall meet requirements listed in Rule R317-4.

(e) Backfill may not be placed over the barrier material or chambers prior to inspection and approval by the regulatory authority.

TABLE 6

Lateral Construction Details

Description	Minimum	Maximum
Number of drain lines per zone	1	---
Length of each perforated line, feet	---	150
Bottom width of trench, inches	6	36
Total depth of trench, inches	9	36
Spacing of lines, wall to wall, feet	4	---
Depth of backfill, inches	6	---
Depth of aggregate cover over lines, inches	2	---
Depth of aggregate beneath lines, inches	3	---
Grade of drain lines, inches per 100 feet	Level	4

NOTICES OF PROPOSED RULES

TABLE 7

Minimum Standards for Graywater Sewer and Distribution Pipe Materials (a)

Acceptable Graywater Pipe Materials

Type of Pipe	Minimum Standard
Acrylonitrile-Butadiene	
Styrene (ABS)	ASTM (b), D-2680, D-2751, F-628
Polyvinyl Chloride (PVC)	ASTM D-2665, D-3033, D-3034

Acceptable Distribution Pipe Materials

Type of Pipe	Minimum Standard
ABS	ASTM D-2661, D-2751
Polyethylene (PE)	Smooth Wall ASTM D-3350
PVC	ASTM D-2665, D-3033, D-3034, D-2729(c)

Notes:

- (a) Each length of graywater sewer and distribution pipe shall be stamped or marked.
- (b) American Society for Testing and Materials.
- (c) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for any application.

R317-401-7. Construction and Installation of Branched Drain Basin Systems.

7.1. Branched Drain Basin Construction Details.

- (a) Mulch shields shall be constructed of a durable material and should be placed for optimum effluent distribution.
- (b) Aggregate shall be placed in the basin in a manner that will allow proper effluent distribution, prevent ponding, with a minimum depth of 6 inches over graywater flood level, and as required in Table 6.
- (c) Backfill may not be placed over the mulch shields or flow splitters until after inspection and approval by the regulatory authority.
- (d) Access to any flow splitter or mulch shield shall be within 6 inches of finished grade.
- (e) Branched drain basins shall be constructed in accordance with Table 8 and Table 9.

TABLE 8

Mulch Basin Sizing

Soil Type	Mulch Basin Loading Rate, gallons of graywater per day per square foot	Maximum gallons per mulch shield per day(a)
Sand	5	60
Loam	3	40
Clay	1	20

(a) The number of gallons per mulch shield per day is site specific and the designer may need to decrease the number of gallons per mulch shield when appropriate or as required by the regulatory authority.

TABLE 9

Mulch Basin Construction Details

Description	Minimum	Maximum
Cleanouts	1	---
3-way Valve or similar (per stub out location)	1	---
Discharge Points (per stub-out location)	2	16
Double Ell Flow Splitter	1	---
Pipe Diameter	2 inch	4 inch
Pipe Slope	1/4 inch per foot	---
Mulch Shield Volume	5 gallons	---

Air gap in mulch shield above highest perforation	6 inches	---
---	----------	-----

7.2. Construction, Inspection and Testing.

- (a) Installation shall conform to the equipment and installation methods described in the approved plans.
- (b) Any surge tank shall be filled with water to the overflow line prior to and during construction inspection. All seams and joints shall be left exposed and the tank shall remain watertight.
- (c) The irrigation system shall be installed in the area which has soils similar to the soils which have been evaluated, and has an absorption rate corresponding to the given soil classification.
- (d) A graywater stub-out may be allowed for future construction, provided it is capped prior to connection to the installed irrigation lines and landscaping. Any stub-out shall be permanently marked: GRAYWATER STUB-OUT, DANGER UNSAFE WATER.
- (e) A flow test shall be performed throughout the system, from surge tank to the point of graywater discharge. All lines and components shall be watertight.
- (f) Written operation and maintenance procedures including checklist and maintenance instructions from the designer shall be provided to the owner prior to the regulatory authority issuing written approval or authorization.
- (g) The installed graywater system shall be operated only after receiving a written approval or authorization from the regulatory authority after the regulatory authority has made the final construction inspection.

R317-401-8. Variance to Design Requirements.

8.1. Request for a Variance.

A variance may not be approved unless an applicant demonstrates that:

- (a) A graywater system consistent with Rule R317-401 and local health department requirements cannot be constructed as determined by the regulatory authority;
- (b) Graywater from the proposed graywater system may not:
 - (i) contaminate groundwater or waters of the state;
 - (ii) migrate to the ground surface; or
 - (iii) move off site.
- (c) The proposed system will result in equal or greater protection of public health and the environment than is required by meeting the minimum standards and intent of this rule; and
- (d) Adjacent properties, including the current and reasonably anticipated uses of adjacent properties, will not be jeopardized if the proposed system is constructed, operated, and maintained.

8.2. Procedure for Requesting a Variance.

(a) A variance request shall include the information and documentation described in Subsection R317-401-6.

(b) The regulatory authority shall review the variance request and prepare a written determination outlining the conditions of approval or denial of the request. The review shall identify the factors considered in the process and specify the basis for the determination.

8.3. Application Requirements.

The variance application shall include all information and documentation necessary to evaluate proposal and ensure that public health and the environment are protected.

(a) The regulatory authority shall require a detailed description of the proposed system, including a detailed explanation of wastewater treatment technologies allowed by this rule that have

been considered for use, and that will provide the best available treatment.

(b) The regulatory authority may require technical justification and appropriate engineering, geotechnical, hydrogeologic, and reliability information justifying the request for a variance.

8.4. Variance Approvals.

(a) A variance may not be approved unless the applicant demonstrates that all of the required conditions in Rule R317-401 are met.

(b) The regulatory authority may not issue an approval or an operating permit for a graywater system that does not comply with this rule unless a variance has been approved.

(c) Notice of the conditions shall be recorded in the chain of title for the property in the office of the county recorder. The notice shall include:

(i) the description of the system and variance conditions;

(ii) operation and maintenance requirements;

(iii) permission for the regulatory authority to access the property for the purpose of inspection and monitoring of the system; and

(iv) owner responsibilities to correct, repair, or replace the system at the direction of the regulatory authority.

R317-401-9. APPENDICES.

APPENDIX A. RECOMMENDED BEST MANAGEMENT PRACTICES.

The use of plant friendly products is important when using graywater for irrigation. Products should be salt and borax free in addition to being biodegradable and non-toxic. Plant friendly products are key when reusing graywater. Chlorine bleach can be harmful to plants and should be diverted to your sewer system. Hydrogen peroxide based products can be used instead of bleach. The pH of your graywater also needs to be considered. Most soaps do not change the pH but some do. Liquid soaps typically do not change the pH of graywater. Bar soaps can make the water very basic. Choosing plants that are not affected by pH is best if you are not sure if the pH is being affected by the products you typically use. Graywater systems are not maintenance free and require consistent and frequent inspection by the owner to ensure proper functionality.

7.1. Graywater Compatible Plants.

(a) Trees and fruit trees;

(b) Bushes, shrubs, and vines;

(c) Larger perennials and annuals; and

(d) Food crops for which the graywater will not come into contact with the edible portion of the plant.

7.2. Graywater Incompatible Plants.

(a) Acidic soil-loving plants;

(b) Seedlings or young plants.

7.3. Graywater Irrigation Issues.

Graywater can clog drip systems without proper filtration and regular maintenance. Either remove solid particles from the water (by filtering or settlement) or increase the diameter of the holes in the irrigation pipe. It is recommended that drip irrigation hoses with small outlets not be used for graywater irrigation unless the solid particles have been removed.

7.4. Maintaining Graywater Irrigation Zones.

It may be necessary to replace mulch, flush soil with potable or fresh water periodically during extended periods of no rain in order to disperse minerals, such as salts from building up. Check for these issues and adjust graywater output accordingly:

- (a) Unusual odors;
- (b) Clumping of soil;
- (c) Poor vegetation growth;
- (d) Presence of damp or boggy ground after irrigation, or soil is excessively damp with signs of surface ponding and run-off;
- (e) a fine sheet of clay covering the surface; or
- (f) evidence of pests and diseases on plants.

APPENDIX B. INSPECTION AND MAINTENANCE SCHEDULE.

TABLE 10

Graywater System Inspection and Maintenance Frequency

Inspection and Maintenance Item	Frequency
Inspect and clean filters and screens, replacing where necessary	Every 3 months
Inspect and verify that disinfection, filters, and water quality treatment devices and systems are operational and maintaining minimum water quality requirements	In accordance with manufacturer's instructions and the regulatory authority
Inspect pumps and verify operation	After initial installation and every 12 months thereafter
Inspect valves and verify operation	After initial installation and every 12 months thereafter
Inspect pressure tanks and verify operation	After initial installation and every 12 months thereafter
Inspect and clear debris from storage tanks, locking devices, and verify operation	After initial installation and every 12 months thereafter
Inspect caution labels and markings	After initial installation and every 12 months thereafter
Inspect for cross-connections and test entire system	After initial installation and every 12 months thereafter
Inspect and maintain mulch basins	As needed to maintain mulch depth and prevent ponding and runoff

KEY: wastewater, graywater, drip irrigation

Date of Enactment or Last Substantive Amendment: [September 24, 2013]2020

Notice of Continuation: April 8, 2019

Authorizing, and Implemented or Interpreted Law: 19-5

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R357-16b	Filing No.
Ref (R no.):		52343

Agency Information

1. Department:	Governor
Agency:	Economic Development
Street address:	60 E. South Temple
City, state:	Salt Lake City, UT 84111
Mailing address:	60 E. South Temple

NOTICES OF PROPOSED RULES

City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-538-8864	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Utah Children's Outdoor Recreation and Education Grant Program Rule

3. Purpose of the new rule or reason for the change
(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

S.B. 222, passed by the Legislature during the 2019 General Session, created the Utah Children's Outdoor Recreation and Education Grant Program (Program). The new statutory language permits the Governor's Office of Economic Development (Office) to promulgate rules to administer the Program. The purpose of this rule filing is to clarify the standards for participation in the Program.

4. Summary of the new rule or change:

Section R357-16b-102 creates definitions that will be used to administer the Program. Section R357-16b-103 references the authority granted in the statutory language that permits rulewriting. Section R357-16b-104 outlines the application form and submission process. Section R357-16b-105 establishes the eligible entities. Section R357-16b-106 establishes the eligibility criteria. Section R357-16b-107 outlines the method and formula for determining grant recipients. Section R357-16b-107 establishes the method and formula for determining grant recipients.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no aggregate anticipated cost or savings to the state budget. This rule is merely creating the requirements for Utah Children's Outdoor Recreation and Education Grant Program that was created by the passing of S.B. 222 (2019).

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no aggregate anticipated cost or savings to small businesses because this proposed rule does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the Program is optional.

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

There is no regulatory impact creating financial cost to non-small businesses. This proposed rule filing is to clarify the standards for participation in the Program. There are no general regulations being promulgated by this rule because the Program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons general because this rule only applies to those who chose to participate in this Program in order to receive a grant.

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 aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons because participation in the Program is optional.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Governor's Office of Economic Development, Val Hale, 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 new rule implements S.B. 222 (2019) which created the Utah Children's Outdoor Recreation and Education Grant Program. The purpose of this rule filing is to clarify the standards for participation in the Program. This rule will have no impact on businesses.

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

Val Hale, 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 63N-9-403(1)		
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and

Rule R15-1 for more information.)	
A) Comments will be accepted	03/02/2020 until:

10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	11/15/2019
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R357. Governor, Economic Development.**R357-16b. Utah Children's Outdoor Recreation and Education****Grant Program Rule.****R357-16b-101. Title.**

This rule is known as the "Utah Children's Outdoor Recreation and Education Grant Program Rule."

R357-16b-102. Definitions.

In addition to the terms defined in Section 63N-9-102, the following terms are defined for this rule:

(1) "Advisory committee" means the Utah Outdoor Recreation Grant Advisory Committee created in Section 63N-9-204.

(2) "Board" means the Board of Business and Economic Development created in Section 63N-1-401.

(3) "Director" means the director of the Utah Office of Outdoor Recreation.

(4) "Executive director" means the executive director of the Governor's Office of Economic Development.

(5) "Nonprofit corporation" means an entity registered and in good standing with the Internal Revenue Service as a 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), or 501(c)(8).

(6) "Office" means the Utah Office of Outdoor Recreation.

(7) "Participant" means children, as defined in Subsection 63N-9-102 (2), who are participating in a UCORE funded program.

(8) "Partner" means two or more entities collaborating with a common interest or goal in providing youth with high-quality outdoor recreation or nature-based learning programming.

(9) "Recipient" means the organization or entity that is awarded a UCORE grant.

R357-16b-103. Authority.

This rule is adopted under Subsection 63N-9-403 (1) which requires the office to make rules for administration of the UCORE grant program.

R357-16b-104. Application Form and Submission Process.

(1) The application will be provided by the Office and, at minimum, contain the following content:

NOTICES OF PROPOSED RULES

- (a) general submission instructions including:
 - (i) deadlines
 - (ii) reports; and
 - (iii) relevant timelines.
 - (b) grants available to be claimed;
 - (c) instructions for providing:
 - (i) a project description;
 - (ii) timeline;
 - (iii) a budget for total project cost;
 - (iv) funds already procured for the project;
 - (v) an itemized accounting showing planned use of the grant funds being requested;
 - (vi) reporting project impacts including community and economic impacts; and
 - (vii) required documents and information necessary for verification and approval of the application; and
 - (d) the application scoring system.
- (2) (a) The application shall be created in an electronic form available to the public on the Office's website; and
- (b) be available in paper upon request.
- (3) To be considered for review the Office must receive the application on or before the deadline specified in the application.

R357-16b-105. Eligible Entities.

- (1) Grants may be awarded to the following entities Utah:
- (a) nonprofit corporations, as defined in Subsection R357-16b-102(5), physically located within Utah;
 - (b) Utah municipalities;
 - (c) Utah counties;
 - (d) tribal governments; and
 - (e) educational institutions, including public colleges, universities, primary and secondary public schools and school districts.
- (2) For-profit entities may not receive a UCORE grant.

R357-16b-106. UCORE Grant Eligibility Criteria.

- (1) The Office will not fund more than 50% of the proposed program's eligible costs.
- (2) The maximum grant request is dependent on available funds and will be outlined in the grant application.
- (3) Applicants and their partners may use both in-kind resources and cash, provided the cash match makes up 50% or more of the match requirement.
- (4) Up to 50% of the grant recipient's match may be provided through an in-kind contribution by the grant recipient, if:
 - (a) approved by the executive director after consultation with the director; and
 - (b) the in-kind donation is for services or materials that are directly related to the objectives of the program.
- (5) At least 75% of the matching funds for the project must be secured in order for the application to be considered.
- (6) Programs that teach a difficult skill with some inherent risk may begin the skill-building in an indoor controlled environment before the program moves the youth into the appropriate outdoor space during the program.
- (7) To qualify for participation in UCORE programs shall:
 - (a) maintain any certification or training required by law or facility for all staff members or volunteers supervising participants;

- (b) ensure their program staff and volunteers have received the appropriate screenings or applicable background checks before taking a role interacting with the youth;
- (c) ensure the equipment is in good, working condition and that all safety precautions are being followed to minimize the inherent risks of outdoor activities; and
- (d) carry the appropriate insurance coverage.

R357-16b-107. Method and Formula for Determining Grant Recipients.

- (1) The Office shall:
 - (a) use a weighted scoring system to enable the advisory committee to analyze and advise on the awarding of grant and grant amounts. The scoring system shall:
 - (i) be made available in the application; and
 - (ii) assess and value general categories.
 - (b) distribute the grant applications among the advisory committee members and ensure that each application will be reviewed and scored by members of the advisory committee.
 - (c) use the average of the scores provided by the advisory committee members to create a prioritization matrix ranking the applications in ascending order.
 - (d) provide a synopsis of each scored program to the advisory committee.
- (2) In awarding UCORE funds, consideration shall be given to entities that implement programs that align with the priorities outlined in Subsection 63N-9-403(5).
- (3) The advisory committee shall make recommendations for grant awards and shall forward the recommendations to the executive director and the board for final approval.
- (4) The Office shall notify applicants of the funding decision within two weeks of the final decision and:
 - (a) successful applicants will be notified of expected contractual requirements; and
 - (b) unsuccessful applicants will be notified of the rejection.
- (5) Upon request an applicant may receive feedback as to why the application was denied.

- (6) An advisory committee member shall recuse themselves from voting on a program in which they have substantial interest.

R357-16b-108. Reporting and Reimbursement Requirements.

- (1) A grant recipient who is awarded a UCORE grant must sign a contract with the Utah prior to receiving any funds. After the contract has been signed by both parties, the recipient may receive half of the grant funding in order to cover the initial costs of the program.
- (2) To receive the remaining funds upon completion of the project, the grant recipient shall make the request for reimbursement, using the request form provided by the Office. The remaining funds of the grant award will be given upon completion of the program and the following conditions:
 - (a) the program shall provide a detailed final report including required measured data as described in the UCORE Program Guide and application and photos or videos that document the program's highlights.
 - (b) invoice from the recipient for the remainder of the funds.
 - (c) supporting documentation to show proof of monies spent on programming, as well as documentation of in-kind services or other donations or work on the project

(3) The contracts for youth programs will limit the applicant to complete the program within 18 months.

(4) If a recipient has a legitimate reason to amend the contract, a written request should be submitted to the Office. If approved, the contract may be amended at the discretion of the Office.

(5) A brief program report shall be provided to the Office at least every six months until the completion of the program. The report shall include a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent, in addition to a description of any work completed and work remaining.

KEY: outdoor recreation and education

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 63N-9-403(1)

or provide for the enforcement of minimum rules of sanitation necessary to protect the public health including rules necessary for the design, construction, operation, maintenance, or expansion of barbershops and beauty shops, as well as other places of business.

4. Summary of the new rule or change:

This rule establishes minimum standards for the sanitation, operation, and maintenance of a cosmetology facility, as defined by the rule, and provides for the prevention and control of health hazards associated with a cosmetology facility that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R392-702	Filing No.
Ref (R no.):		52486

Agency Information

1. Department: Health

Agency: Disease Control and Prevention, Environmental Services

Room no.: Second Floor

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	801-538-6191	chrisnelson@utah.gov
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Cosmetology Facility Sanitation

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This new rule was developed to meet the requirements in authorizing statutes. This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsection 26-1-30(23). Section 26-15-2 and Subsection 26-1-30(23) direct the Department of Health to establish and enforce,

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enacting Rule R392-702 will not result in a cost or benefit to the state budget because the proposed rule does not require a change to state operations or programs, and it does not include requirements for the payment of fines or fees.

B) Local governments:

Enacting Rule R392-702 will not result in a direct cost or benefit to the local governments because no construction, equipment, or operational changes are required by this rule. The proposed rule does not include requirements for permit or inspection fees.

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

There are approximately 1,048 small businesses in Utah providing cosmetology services (NAICS codes 812111, 812112, 812113, 812199, and 611511). Enacting Rule R392-702 will not result in a direct cost or benefit to small businesses because the rule requires no construction, equipment, or operational changes. This rule does not require a construction change in any portion of the cosmetology facility if the facility was operating in compliance with applicable laws and ordinances in effect prior to enactment of this rule. The sanitation, operation, maintenance, and infection control standards established by this rule are consistent with industry standard practices, processes, and procedures as currently instructed in barbering, cosmetology, esthetics, and nail technology schools throughout Utah.

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

There are two non-small businesses operating in Utah in the affected industry (NAICS codes 812111, 812112, 812113, 812199, and 611511). Enacting Rule R392-702 will not result in a direct cost or benefit to non-small businesses because no construction, equipment, or

NOTICES OF PROPOSED RULES

operational changes are required by this rule. This rule does not require a construction change in any portion of the cosmetology facility if the facility was operating in compliance with applicable laws and ordinances in effect prior to enactment of this rule. The sanitation, operation, maintenance, and infection control standards established by this rule are consistent with industry standard practices, processes, and procedures as currently instructed in barbering, cosmetology, esthetics, and nail technology schools throughout Utah.

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 Rule R392-702 will not result in a direct cost or benefit to any one specific person.

F) Compliance costs for affected persons:

Affected persons are as follows:

State: Utah Department of Health (UDOH). No compliance costs because this rule requires neither the implementation of new programs or duties nor the expansion or modification of existing programs or duties.

Local Governments: 13 local health departments. No compliance costs because the rule does not require applications, permits, facility inspections, or the completion of any other duties beyond current practice.

Small businesses: Public places of business with fewer than 50 employees such as barber schools, barber and beauty colleges, barber shops, cosmetology schools, cosmetology salons or shops, hair salons, beauty shops, beauty salons, beauty parlors, manicure and pedicure salons, cosmetology schools, electrolysis (i.e., hair removal) salons, and esthetician (i.e., skin care) services. No compliance costs because the rule does not require applications, permits, facility inspections, or the completion of any other duties beyond current practice. The sanitation, operation, maintenance, and infection control standards established by this rule are consistent with industry standard practices, processes, and procedures as currently instructed in barbering, cosmetology, esthetics, and nail technology schools throughout Utah.

Non-Small businesses: Public places of business with 50 or more employees such as barber schools, barber and beauty colleges, barber shops, cosmetology schools, cosmetology salons or shops, hair salons, beauty shops, beauty salons, beauty parlors, manicure and pedicure salons, cosmetology schools, electrolysis (i.e., hair removal) salons, and esthetician (i.e., skin care) services. No compliance costs because the rule does not require applications, permits, facility inspections, or the completion of any other duties beyond current practice. The sanitation, operation, maintenance, and infection

control standards established by this rule are consistent with industry standard practices, processes, and procedures as currently instructed in barbering, cosmetology, esthetics, and nail technology schools throughout Utah.

Other Persons: No compliance costs because no one specific person will be affected by 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 Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of 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:

There is no fiscal impact on businesses because this rule does not require changes to construction, equipment, or

operation that are not already consistent with industry standard practice.

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	Subsection 26-1-	Section 26-15-2 30(23)
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Public Notice Information

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

A) Comments will be accepted 03/02/2020
until:

10. This rule change MAY 03/09/2020
become effective on:

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,	Joseph Miner, MD, Executive Director	Date:	01/10/2020
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R392. Health, Disease Control and Prevention, Environmental Services.

R392-702. Cosmetology Facility Sanitation.

R392-702-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30(23), and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a cosmetology facility, as defined by this rule, and provides for the prevention and control of health hazards associated with a cosmetology facility that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

R392-702-2. Applicability.

(1) This rule applies to facilities in which one or more individuals are engaged in any of the following practices, unless specifically exempted:

- (a) barbering;
- (b) barbering instruction;
- (c) cosmetology/barbering;
- (d) cosmetology/barbering instruction;
- (e) electrolysis;
- (f) electrolysis instruction;
- (g) esthetics;
- (h) master-level esthetics;
- (i) esthetics instruction;
- (j) hair design;
- (k) hair design instruction;
- (l) nail technology; or
- (m) nail technology instruction.

(2) This rule applies to the following school facilities:

- (a) a barbering school;
- (b) a cosmetology/barbering school;
- (c) an electrolysis school;
- (d) an esthetics school;
- (e) a hair design school; or
- (f) a nail technology school.

(3) This rule does not apply to:

(a) physicians, surgeons, nurses, other medical persons, or morticians, if duly licensed to practice their respective professions in the State of Utah, and if engaged in the personal performance of the duties of their respective profession;

(b) a commissioned physician or surgeon serving in the armed forces of the United States or another federal agency;

(c) a person who visits the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;

(d) a person providing instruction in workshops, seminars, training meetings, or other educational programs whose purpose is to provide continuing professional development to licensed barbers, cosmetologists/barbers, hair designers, estheticians, master estheticians, electrologists, or nail technicians;

(e) an employee of a company that is primarily engaged in the business of selling products used in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrolysis, or nail technology when demonstrating the company's products to a potential customer; or

(f) the practice of ear piercing; body art; body painting; body piercing; face painting; henna tattoos and permanent tattoos; threading; microblading; permanent makeup; tanning by UV radiation and spray tanning units; injectables; mortuary services; massage; body wraps when performed by a massage therapist; or hair braiding.

R392-702-3. Definitions.

As used in this rule:

(1) "Barber" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing to perform barbering; or any person engaged in the practice of barbering for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(2) "Chemical disinfectant" means:

(a) a solution of EPA-registered bactericidal, fungicidal, and virucidal disinfectants used according to manufacturer's directions; or

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(b) a chlorine bleach solution in a concentration range of between 200 ppm and 500 ppm.

(3) "Clean" means the condition of being visibly free from dirt, soil, debris, or other materials not intended to be a part of the object in question.

(4) "Client" means any person who enters a cosmetology facility, or school facility as listed in Subsection R392-702-2(2), with the intent to receive cosmetology services.

(5) "Cosmetologist/Barber" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing to perform cosmetology or barbering; or any person engaged in the practice of cosmetology/barbering for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(6) "Cosmetology facility" means any structure, dwelling, or business where cosmetology, barbering, or associated professional services, as listed in Subsection R392-702-2(1), are practiced.

(7) "Disinfection" means the use of a chemical disinfectant to destroy pathogens on reusable implements and other non-porous, nonliving surfaces or to prevent the growth of pathogenic organisms, which thereby renders an item safe for handling and use.

(8) "Dwelling" means a building or structure that is intended or designed to be used, rented, leased, let or hired out for human habitation. A mobile vehicle or mobile structure ("mobile salon") is not a dwelling.

(9) "Electrologist" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing to engage in the practice of electrology; or any person engaged in the practice of electrology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(10) "Esthetician" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing who engages in the practice of basic esthetics or master esthetics; or any person engaged in the practice of basic esthetics or master esthetics for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(11) "Eyelash technician" means an individual who is engaged in the practice of eyelash technology and is licensed by the State of Utah Division of Occupational and Professional Licensing to engage in the practice of cosmetology/barbering or esthetics; or any person engaged in the practice of eyelash technology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(12) "Eyelash technology" means the application, removal, and trimming of threadlike natural or synthetic fibers to an eyelash, including the cleansing of the eye area and lashes.

(13) "Foot bath" means any basin, tub, sink, or bowl using non-circulating water in the practice of cosmetology, esthetics, or nail technology.

(14) "Hair braiding" has the same meaning as provided in Section 58-11a-102(18).

(15) "Hair designer" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing to engage in the practice of hair design; or any person engaged in the practice of hair design for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(16) "Hot water" means water heated to a temperature of not less than 110° F (43.3° C) at the outlet.

(17) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission,

vermin infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

(18) "Licensed professional" means a barber, cosmetologist/barber, electrologist, esthetician, hair designer, nail technician, as defined in this rule, or an instructor in a school facility as listed in Subsection R392-702-2(2).

(19) "Linens" means towels, sheets, headbands, robes, capes, drapes and other reusable textiles commonly used in a cosmetology facility.

(20) "Local health department" has the same meaning as provided in Section 26A-1-102(5).

(21) "Local health officer" means the health officer of the local health department having jurisdiction, or a designated representative.

(22) "Nail technician" means an individual who is licensed by the State of Utah Division of Occupational and Professional Licensing to engage in the practice of nail technology; or any person engaged in the practice of nail technology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(23) "Operator" means any licensed professional as defined in this rule, or any person who owns, leases, manages or controls, or who has the duty to manage or control a cosmetology facility.

(24) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails or cuticles of the feet;

(b) the use of manual instruments or implements on the nails or cuticles of the feet;

(c) callus removal by sanding, buffing, or filing including electric filing; or

(d) massaging of the feet or lower portion of the leg.

(25) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(26) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.

(27) "Practice of barbering" has the same meaning as provided in Section 58-11a-102(29).

(28) "Practice of basic esthetics" has the same meaning as provided in Section 58-11a-102(31).

(29) "Practice of cosmetology/barbering" has the same meaning as provided in Section 58-11a-102(32).

(30) "Practice of electrology" has the same meaning as provided in Section 58-11a-102(34).

(31) "Practice of hair design" has the same meaning as provided in Section 58-11a-102(37).

(32) "Practice of master-level esthetics" has the same meaning as provided in Section 58-11a-102(39).

(33) "Practice of nail technology" has the same meaning as provided in Section 58-11a-102(40).

(34) "Service Animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(35) "Waxing" means a treatment in which superfluous hair is removed from a client's face or body by:

(a) covering the hair with a thin layer of soft wax after which a paper or fabric strip is applied and pressed firmly into the wax and then quickly pulled away, removing the wax and body hair; or

(b) covering the hair with a thin layer of heated hard wax after which the wax is allowed to cool, and is then quickly pulled away, removing the wax and body hair.

(36) "Whirlpool foot spa" means any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the cosmetology facility. A drain-and-fill circulating foot spa is considered a self-contained whirlpool foot spa.

R392-702-4. General Requirements

(1) Except as specified in Subsections R392-702-4(1)(a), this rule does not require a construction change in any portion of the cosmetology facility if the facility was operating in compliance with applicable laws and ordinances in effect prior to enactment of this rule. A cosmetology facility that is newly established more than 90 days after the enactment date of this rule shall operate in full compliance with the rule.

(a) The local health officer may require construction changes consistent with this rule if it is determined the cosmetology facility or portion thereof is dangerous, unsanitary, a nuisance or menace to life, health or property, or that it creates an imminent health hazard.

(2) A cosmetology facility located in a private residence or dwelling shall be exempt from the requirements of Section R392-702-5.

R392-702-5. Construction and Operating Requirements.

(1)(a) All floors and interior walls in areas where licensed services are performed, including restrooms and areas where chemicals are mixed or stored, or where water may splash, shall be constructed with smooth, durable, non-porous, and easily cleanable materials, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in all other areas.

(b) Subsection R392-702-5(1)(a) does not apply to licensed cosmetic laser services. A commercial grade, low profile carpet may be used as an alternative in areas where only cosmetic laser devices are used.

(2) Except in a lobby or reception area, all tables, counters, chairs, and equipment in the cosmetology facility shall be constructed of durable, easily cleanable materials, and shall be maintained in good repair.

(3) The operator shall maintain floors, walls, ceilings, shelves, furniture, furnishings, and fixtures in good condition, clean and free from an accumulation of hair, nails, skin, wax, liquids, and other debris.

(4) The operator shall provide adequate covered waste receptacles conveniently located in the facility to contain debris and other solid waste and to prevent the accumulation of solid waste in or around the cosmetology facility or its premises.

(5)(a) All plumbing in the facility shall comply with the provisions of Plumbing Code, including backflow prevention requirements.

(b) Plumbing fixtures shall be free from any cracks or disrepair that would prevent proper cleaning, and shall be maintained in a clean and operable condition.

(c) The water heater shall be of sufficient size to accommodate all attached appliances and fixtures when used simultaneously.

(6) Each cosmetology facility, or adjacent common area, shall have a restroom that is accessible to operators and clients, and is equipped with:

(a) a toilet;

(b) a handwashing sink with hot and cold running water;

(c) liquid or foam soap and toilet tissue in suitable dispensers;

(d) Single-use towels or an alternate hand drying method approved by the local health officer; and

(e) a solid, durable, and easily cleanable waste receptacle.

(7)(a) In addition to the handwashing sink required in Subsection R392-702-5(6)(b), each operator shall have unobstructed access within the facility to at least one handwashing sink that is equipped with:

(i) hot and cold running water;

(ii) liquid or foam soap in a suitable dispenser;

(iii) Single-use towels or an alternate hand drying method approved by the local health officer; and

(iv) a solid, durable, and easily cleanable covered waste receptacle;

(b) A shampoo bowl may be used as a handwashing sink when it meets the requirements of Subsection R392-702-5(7)(a).

(c) A foot bath or whirlpool foot spa shall not be used as a handwashing sink.

(8)(a) A cosmetology facility shall be equipped with a closable cabinet, bin, or room for:

(i) storage of cleaning and disinfecting chemicals; and

(ii) storage of chemicals or products used in licensed practices.

(b) Any hazardous cleaning agents, chemicals, or employee medications located in the restroom shall be kept in a locked cabinet not accessible to the public.

(9) A cosmetology facility shall be equipped with a designated area for the storage of disinfected implements, and an area for the storage of clean towels and linens.

(10)(a) When not in use, all clean and disinfected implements, tools, and materials shall be stored in a designated area, separate from soiled implements and materials.

(b) An operator shall store personal items away from clean and disinfected implements and materials.

(11)(a) Each area having a nail station where a nail technician files or shapes an acrylic nail, as defined in rule by the Division of Occupational and Professional Licensing, shall comply with Section 15A-3-402.

(b) Cosmetologists/barbers, estheticians, and nail technicians shall limit the accumulation of strong, irritating vapors in a cosmetology facility by:

(i) ventilating any areas where such vapors originate; and

(ii) keeping all the applicable chemical products in a separate room with a closable, tight-fitting door;

(iii) closing the packages or containers of chemical products after use; or

(iv) selecting chemical products without strong, irritating vapors.

(12) The cosmetology facility shall be provided with a light source equivalent to at least 25 foot-candles (269 lux) 30 inches off the floor, except that at least 60 foot-candles (646 lux) shall be provided at the level where the licensed service is being performed and where instruments are disinfected.

(13) An operator shall perform services only in areas that are dedicated solely for licensed practice.

(14) A cosmetology facility located in a mobile vehicle or mobile structure ("mobile salon") shall operate in compliance with this rule, and with all city and county laws, regulations, and ordinances regarding water storage, wastewater disposal, electrical and power supply, commercial motor vehicles, vehicle insurance, safety, noise, signage, parking, commerce, business, and all other local government

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requirements. It is the responsibility of the operator to investigate applicable mobile cosmetology facility requirements in each jurisdiction where the mobile cosmetology facility operates, and to ensure compliance with the requirements.

R392-702-6. General Cleaning, Sanitation, Operational, and Maintenance Requirements.

(1)(a) An operator shall employ good personal hygiene habits while providing licensed services.

(b) Before providing any licensed service to a client, all operators shall thoroughly wash their hands with soap and water and dry them with single-use towels or an alternate hand drying method approved by the local health officer.

(c) An operator may use a liquid or foam hand sanitizer in lieu of handwashing when changing gloves or switching tasks while providing any licensed service to the same client.

(2)(a) Before disinfecting any surface or item, any visible debris and disposable parts shall be removed and the surface or item shall be washed with detergent and water or wiped with an all-purpose cleaning agent, rinsed thoroughly, and disinfected according to manufacturer's directions.

(b) Any cleaning agent or chemical disinfectant not in the original container shall have a legible label with the name of the agent and directions. If the original container with directions is available, directions are not required to be repeated on the new container label.

(3)(a) Except when washable or disposable covers are replaced after each client, equipment such as facial chairs, beds, and headrests shall be cleaned and disinfected after each client.

(b) Equipment such as chairs, counter surfaces, cupboards, drawers, mats, and dryers shall be maintained clean.

(4) Before use on a new client, any non-electric multi-use implements or tools intended to touch skin or hair shall be cleaned and disinfected in the following sequential manner:

(a) Remove all visible debris;

(b) Clean with detergent and water;

(c) Rinse with water;

(d) Disinfect by:

(i) completely immersing the implement or tool, including handles, in a chemical disinfectant according to manufacturer's directions; or

(ii) spraying or wiping the implement or tool with a chemical disinfectant according to manufacturer's directions; and

(e) Rinse with water; and

(f) Dry before storing as specified in Subsection R392-702-5(10).

(5) At the conclusion of each client service, electric equipment including electric clippers, nail e-files, curling irons, flat irons, glass or metal electrodes, high frequency wands, esthetic machines, steamers, diffusers, wax pots and paraffin warmers, or other electric or electronic tools that cannot be immersed in liquid shall be cleaned and disinfected, including the equipment body, handle, and attached cord, prior to each use in the following sequential manner:

(a) Remove all visible debris;

(b) Disinfect with a chemical disinfectant spray or wipe according to the manufacturer's directions; and

(c) Store as specified in Subsection R392-702-5(10).

(6) Plastic guards and any nonmetal removable parts shall be removed, cleaned, and disinfected as required in Subsection R392-702-6(4).

(7) Skin care machines and equipment shall be cleaned and disinfected according to the manufacturer's directions.

(8) Chemical disinfectants, including sprays and wipes, shall be prepared and used according to the manufacturer's directions, including contact time, safety precautions, dilution requirements if any, and proper disposal.

(9)(a) If concentrated chemical disinfectants must be diluted with water, measuring devices shall be readily available and used to ensure an effective solution is made.

(b) Unless otherwise directed by the disinfectant label, chemical disinfectant solutions shall be made at least weekly.

(c) Chemical disinfectant solutions shall be disposed of and replenished immediately if visible debris is present or if a lack of disinfection effectiveness is otherwise indicated.

(10) The operator may use a chlorine bleach solution as a chemical disinfectant when the following requirements are met:

(a) Prior to dilution by the operator, chlorine bleach shall contain 5.25% to 6.15% sodium hypochlorite;

(b) Bleach shall contain no fragrances, thickeners, or foaming agents;

(c) Chlorine test strips shall be accessible to the operator, and shall be used to verify chlorine concentration is between 200 and 500 ppm; and

(d) Chlorine bleach shall not be placed or stored near other chlorine-reactive chemicals used in cosmetology facilities (e.g. acrylic monomers, alcohol, ammonia, or other disinfecting products) or near flame.

(11) Immediately after use on a single client, the operator shall dispose of single-use equipment, implements, tools, or porous items including but not limited to nail files, pedicure files, natural pumice, sanding bands, sleeves, heel and toe pumice, exfoliating blocks, buffer blocks, cotton swabs, cotton balls, cotton pads, sponges, gauze, cuticle pushers, disposable applicators, lancets, fabric strips, single-use gloves, neck strips, tissues, thread, disposable wipes, and disposable towels.

(12) Hair cuttings shall be removed from the floor and deposited in a waste receptacle after each haircut.

(13) The operator shall comply with all manufacturer's directions for product and equipment use.

(a) When the manufacturer's directions require a patch test, the operator shall:

(i) offer a patch test; and

(ii) provide information to the client regarding the risk of potential adverse reactions to the product.

(14) The following additional requirements shall apply to waxing:

(a) Wax pots and paraffin warmers shall be kept covered and the exterior cleaned daily;

(b) If debris is found in the wax pot or paraffin warmer, or if the wax or paraffin has been contaminated by contact with skin, unclean applicators, or double-dipping, the wax pot or paraffin warmer shall be emptied, the wax shall be discarded, and the pot or warmer shall be disinfected as required in Subsection R392-702-6(5);

(c) Disposable spatulas and wooden sticks shall be dipped into the wax only once and then discarded without using the other end;

(d) Applicators shall be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service;

(e) Any surface touched by a used wax stick shall be cleaned and disinfected immediately after the service; and

(f) Paraffin wax shall be portioned out for each client in a bag or other container, or dispensed in a manner that prevents contamination of the unused supply.

(15) Any solid waste that may create a nuisance or imminent health hazard that is generated at a cosmetology facility and stored on its exterior premises shall be stored in a leak-proof, non-absorbent container with a tight-fitting lid that shall be kept closed at all times except when placing waste in or emptying waste from the container.

(16) All solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or nuisance.

R392-702-7. Linens and Laundry Service.

(1) The operator shall maintain a sufficient supply of clean linens, as defined in this rule, for each client's use.

(2)(a) Any linens used to cover or protect a client shall not be used for more than one client and shall be deposited in a vented container or hamper labeled "soiled" immediately after use, and not used again until laundered.

(b) The operator shall launder used linens either by regular commercial laundering or by a noncommercial laundering process that includes washing with detergent and hot water in a washing machine, drying on hot with no moisture remaining, and immediately storing in accordance with Subsection R392-702-7(3).

(c) A laundry washing machine located in a cosmetology facility shall only be used for washing soiled linens.

(d) Plastic or nylon capes and aprons shall be washed in a laundry washing machine and:

- (i) dried on any setting in a dryer; or
- (ii) disinfected with a spray disinfectant.

(e) Clean linens shall not come in contact with soiled linens at any time.

(3) After washing and drying as required, the operator shall maintain and store all linens in a clean and sanitary manner at a location free from the likelihood of contamination by vermin, wastewater, filth, or toxic chemicals in either:

- (a) a clean, closed cabinet;
- (b) a clean, solid, and easily cleanable closed container; or
- (c) a designated room on a clean shelf.

(4) Laundry carts, baskets, and hampers shall be constructed with smooth, durable, non-porous, and easily cleanable materials, and shall be maintained in good condition. Washable laundry bags and liners are permitted.

(5) If laundry is processed at the cosmetology facility, the operator shall use the following procedures to prevent cross-contamination from laundry hampers, carts, or baskets:

(a) Any visible debris shall be cleaned from laundry carts and baskets;

(b) Carts and baskets used to store or transport used linens shall be disinfected each day of use with a chemical disinfectant; and

(c) Separate containers (carts, baskets, hampers, laundry bags, etc.) shall be designated and used for storing and transporting clean and soiled linens.

R392-702-8. Specific Health and Sanitation Requirements – Practice of Nail Technology.

(1) Before performing any nail technology services, nail technicians shall wash their hands with soap and water. After which, nail technicians shall clean the areas of the client's body on which the service is to be performed.

(2) Manicure tables and surfaces that may contact the client's hands, wrists, or arms shall be cleaned and disinfected prior to use for each client.

(3)(a) The nail technician shall portion products from multi-use containers into individual-use containers for each client, as required by manufacturer's directions and recognized industry standards.

(b) When finger bowls or reusable containers are used during nail technology services, they shall be replaced with cleaned and disinfected containers for each client.

(4) Prior to use for each client, the operator shall clean and disinfect each whirlpool foot spa in the following sequential manner:

(a) All water shall be drained and all visible debris shall be removed from the spa basin;

(b) The spa basin shall be cleaned with detergent, rinsed with clean water, and drained;

(c) After cleaning, the whirlpool foot spa shall be disinfected with chemical disinfectant according to manufacturer's directions for 10 minutes or the time stated on the label as follows:

(i) Fill the spa basin with clean water;

(ii) Add the appropriate amount of chemical disinfectant;

(iii) Turn the unit on to circulate the chemical disinfectant for the entire contact time.

(iv) After disinfection, drain and rinse the whirlpool foot spa with clean water.

(5) Prior to use for each client, the operator shall clean and disinfect each non-circulating foot bath, as defined in this rule, in the following sequential manner:

(a) Drain the foot bath and remove any visible debris;

(b) Scrub the foot bath with a clean brush, detergent, and water;

(c) Rinse the foot bath with clean water;

(d) Disinfect the foot bath with a chemical disinfectant according to the manufacturer's directions for 10 minutes or the time stated on the label;

(e) Rinse the foot bath with clean water; and

(f) Allow the foot bath to air dry if not placed immediately back into service.

(6) At the conclusion of each business day, the operator shall clean and disinfect each used whirlpool foot spa in the following sequential manner:

(a) Remove the filter screen, inlet jets, and all other removable parts from the basin and clean out any debris trapped behind or in them.

(b) Using a brush, scrub the parts described in Subsection R392-702-8(6)(a) with detergent.

(c) Rinse the parts described in Subsection R392-702-8(6)(a) with clean water and place them back into the basin apparatus.

(d) Fill the basin with clean water and add a chemical disinfectant, following label directions.

(e) Turn the unit on and circulate the system with the chemical disinfectant solution for 10 minutes or the time stated on the label.

(f) After disinfection, drain the spa basin, rinse with clean water, and air dry.

(7)(a) A local health officer may exempt an operator from the requirements of Subsection R392-702-8(5) when the operator uses a removable spa basin liner in a non-circulating foot bath when the liner is discarded after each client.

(b) The operator shall adhere to the requirements of Subsections R392-702-8(4) and R392-702-8(6) even when using a removable spa basin liner in a whirlpool foot spa.

(8)(a) Before soaking a client's feet in a foot bath or whirlpool foot spa, the operator shall examine the client's feet and legs for any condition that may weaken the skin barrier.

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(b) If open sores or skin wounds are present, including insect bites, scratches, or scabbed-over wounds, the operator shall explain to the client that the foot bath or whirlpool foot spa should not be used.

(9) Only electric files or machines specifically designed and manufactured for use in the practice of nail technology may be used in any cosmetology facility for performing nail technology services. Craft, hardware, and hobby, or other similar type tools, or kitchen utensils shall not be used under any circumstances.

(10) After each use on a single client, diamond, carbide, and metal bits shall be:

(a) cleaned of all visible debris by either:

(i) using a brush;

(ii) using an ultrasonic cleaner according to manufacturer's directions; or

(iii) immersing the bit in acetone for 10 minutes; and then

(b) disinfected by complete immersion in a chemical disinfectant according to manufacturer's directions.

R392-702-9. Specific Health and Sanitation Requirements -- Practice of Basic and Master Esthetics.

(1) Estheticians shall wash their hands with soap and water prior to performing any licensed services on a client. Gloves shall be worn during any type of extraction.

(2) Equipment, multi-use implements, and tools and materials shall be properly cleaned and disinfected after servicing each client as described in Section R392-702-6.

(3) The following items that are used during services shall be replaced with clean items for each client:

(a) disposable and cloth towels;

(b) hair caps;

(c) headbands;

(d) brushes;

(e) gowns;

(f) makeup brushes; and

(g) other items used for a similar purpose.

(4)(a) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks, oils and other preparations shall be used in a manner so as not to contaminate the remaining product.

(b) Applicators shall not be re-dipped in product.

(c) Permitted procedures to avoid cross contamination are:

(i) Disposing of the remaining product before beginning services on each client;

(ii) Using a single-use disposable applicator device to apply product and disposing of such device after use;

(iii) Using an applicator bottle to apply the product; and

(iv) Dispensing product from a multi-use container into a separate container for single client use.

(5) An esthetician shall not dispense any service product directly from a container with ungloved fingers..

R392-702-10. Specific Health and Sanitation Requirements -- Eyelash Extension Services

(1) The practice of eyelash extension services shall only be performed by a licensed cosmetologist/barber or esthetician/master esthetician.

(2) Eyelash technicians shall wash their hands thoroughly with soap and water prior to performing any licensed services on a client.

(3) Equipment, implements, and materials including eyelash stands, holders, pallets, and trays shall be cleaned and disinfected in

accordance with Section R392-702-6 prior to providing any licensed service.

(4) Glue pallets and holders shall be:

(a) used on only one client, and disposed according to Subsection R392-702-6(11) after each client; or

(b) cleaned and disinfected in accordance with Subsection R392-702-6(4) before use with each client.

(5) Reusable items that are used during services shall be replaced with clean items for each client, including, but not limited to:

(a) cloth towels;

(b) hair caps, headbands, and gowns; and

(c) brushes and spatulas that contact skin or products from multi-use containers.

(6) An operator shall use only properly labeled semi-permanent glue and semi-permanent glue remover, intended and approved for use on humans around the eyes, in accordance with the manufacturer's directions.

(7) Eyelash extensions shall be stored in a clean, closed container or sealed in the original packaging, and shall be kept in a clean, dry, debris-free storage area.

(8)(a) Contaminated eyelash extensions shall not be used or reused on a client.

(b) When removing eyelashes from the container or package to portion out eyelashes for a service, an eyelash technician shall use disinfected scissors, blade, or other tool to snip a portion of a strip, or a disinfected tweezer to portion out the lashes for each service.

R392-702-11. Prohibited Products and Practices.

(1) Operators shall not use any of the following substances or products in performing cosmetology services:

(a) Methyl Methacrylate Liquid Monomers, a.k.a., MMA;

(b) Razor-type callus shavers designed and intended to cut or shave growths of skin such as corns and calluses (e.g. credo blades or "microplanes"), unless licensed with the Utah Division of Professional Licensing as a Master Esthetician;

(c) Styptic pencil, alum, or other astringent in stick or lump form. (Alum or other astringents in powder or liquid form are acceptable.); and

(d) Fumigants such as formalin (formaldehyde) tablets or liquids.

(2) Multiple-use roll-on wax is prohibited. Single-use roll-on wax cartridges are acceptable but shall be disposed of immediately after service. Roll-on wax cartridges warming in a wax heater shall have an intact seal. The heating unit is subject to the requirements of Subsection R392-702-6(5), and shall be cleaned and disinfected after each use.

(3) UV sterilizers or light boxes shall not be used as an infection control device in a cosmetology facility. This does not apply to UV dryers or ultraviolet lamps used to dry or cure nail products.

(4) Electric or battery-operated equipment or implements not specifically manufactured for use on humans are prohibited.

(5) Live fish, leeches, snails, and other living creatures shall not be used in the practice of cosmetology/barbering, esthetics, or nail technology.

(6)(a) Only service animals assisting persons with disabilities are permitted in a cosmetology facility. Pets, emotional support animals, comfort animals, and therapy animals are not permitted.

(b) Animal beautification or pet grooming services shall not be performed in a cosmetology facility.

(7) An operator shall not perform licensed cosmetology services on a client if:

(a) the operator has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the operator takes medically approved measures to prevent transmission of the disease; or

(b) The client has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the operator takes medically approved measures to prevent transmission of the disease.

R392-702-12. Food Service.

When food or beverage service is provided for cosmetology clients, food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in Rule R392-100 and local health department regulations.

R392-702-13. Inspections and Investigations.

(1) Upon presenting proper identification, the operator shall permit the Local Health Officer to enter upon the premises of a cosmetology facility to perform inspections, investigations, and other actions as necessary to ensure compliance with Rule R392-702.

(2) The operator shall have access to all cosmetology facility space, including leased space, and shall provide the Local Health Officer with access to all cosmetology facility space.

R392-702-14. Closing or Restricting Use of a Cosmetology Facility.

(1) If a local health officer deems a cosmetology facility or portion thereof to be an imminent health hazard, the cosmetology facility may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any cosmetology facility closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any cosmetology facility or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

KEY: cosmetologist/barber, hair salon, nail salon, esthetician

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(23); 26-15-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R414-311	Filing No.
Ref (R no.):	52482	

Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 North 1460 West, Salt Lake City, UT
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:

Targeted Adult Medicaid

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The purpose of these changes is to implement new subgroups and restrictions for the Targeted Adult Medicaid (TAM) program, in accordance with Utah's 1115 Demonstration Waiver.

4. Summary of the new rule or change:

These changes implement four new subgroups for the TAM program, clarifies provisions within the program, clarifies program eligibility in terms of Medicare, and makes other technical changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is an anticipated cost of about \$28,000,000 to the state budget.

B) Local governments:

There is no impact on local governments because they neither fund nor provide services under the TAM program.

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

Small businesses in the fields of social services, mental health, and addiction recovery may see a portion of annual revenue based on the total amount of \$28,000,000, with the expansion TAM eligibility.

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

Non-small businesses in the fields of social services, mental health, and addiction recovery may see a share of revenue based on the total amount of \$28,000,000, with the expansion of TAM eligibility.

NOTICES OF PROPOSED RULES

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

Medicaid providers may see a share of revenue based on the total amount of \$28,000,000, with the expansion of TAM eligibility. Individuals who become eligible for the TAM program may also see out-of-pocket savings based on that amount.

F) Compliance costs for affected persons:

There are no compliance costs because these changes can only result in business revenue and out-of-pocket savings.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$28,000,000	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$28,000,000	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$8,400,000	\$0
Non-Small Businesses	\$0	\$9,800,000	\$0
Other Persons	\$0	\$9,800,000	\$0
Total Fiscal Benefits	\$0	\$28,000,000	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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:

Businesses will see a share of revenue with the expansion of eligibility for the Targeted Adult Medicaid program.

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	Pub L. No. 111-148
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on: 03/09/2020

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:	01/08/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-311. Targeted Adult Medicaid.

R414-311-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Chronically [H]homeless [I]individual" means an individual who:

(a) has a substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic illness or disability; and

([a]i) [is living]lives or resid[ing]es for at least 12 months, or on at least four separate occasions that amount to at least 12 months in the last three years, in a place not meant for human habitation, in a safe haven, or in an emergency shelter; or

([b]ii) [is living]lives in supportive housing and has previously met the criteria established in Subsection R414-311-2([2]1)(a)(i).

(b) lives or resides for at least six months within a 12-month period in a place not meant for human habitation, in a safe haven, or an emergency shelter, and has a substance use or serious mental health disorder; or

(c) is a victim of domestic violence who resides in a place not meant for human habitation, a safe haven, or in an emergency shelter.

(2) "Dependent [C]child" means a child who is under 19 years of age, and required to be included in the [Targeted Adult Medicaid]household size for the Targeted Adult Medicaid program.

(3) "Individual [N]eeding [F]treatment" means an individual who:

(a) [is receiving]receives General Assistance from the Department of Workforce Services and has been diagnosed with a substance use or mental health disorder; or

(b) was discharged from the Utah State Hospital and was admitted due to a civil commitment[; or].

[——— (e) is living or residing for at least 6 months within a 12 month period in a place not meant for human habitation, in a safe haven, or an emergency shelter, and has a substance use or serious mental health disorder.]

(4) "Justice [I]involved [I]individual[s]" means an individual who needs substance use or mental health treatment and:

(a) has complied with and substantially completed a substance use disorder treatment program while incarcerated in jail or prison; or

(b) was discharged from the Utah State Hospital and was admitted to the civil unit in connection with a criminal charge, or to the forensic unit due to a criminal offense, [with]in which the individual was charged or convicted:[; or]

(c) is involved with a drug or mental health court[-];

(d) is court-ordered to receive substance abuse or mental health treatment through a district or tribal court; or

(e) is on probation or parole with a serious mental illness, serious substance use disorder, or both.

R414-311-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to applicants and enrollees.

(1) The following individuals are not eligible for Targeted Adult Medicaid:

(a) Individuals who do not meet the coverage group criteria of being chronically homeless, justice[—]involved, or needing treatment as defined in Section R414-311-2;

(b) Individuals who have a dependent child under 19 years old;[; or]

(c) Individuals who are eligible for a Medicaid program without a spenddown[;]; or

(d) Individuals who are eligible for or receive Medicare.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Targeted Adult Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Targeted Adult Medicaid.

(b) An individual may only enroll in Targeted Adult Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency only enrolls applicants during an open enrollment period. The eligibility agency may limit the number it enrolls and may stop enrollment at any time. The open enrollment period may be limited to a coverage group or a subgroup within the coverage group.

(4) The eligibility agency shall waive the open enrollment requirement for the following [situations]individuals:

(a) [The]An individual who was previously on Targeted Adult Medicaid, and [is moving]moves from another Medicaid program back to Targeted Adult Medicaid, is otherwise eligible, and there is no break in coverage between the medical programs;

[——— (b) The individual is no longer eligible for PCN, is otherwise eligible, and there is no break in coverage between the two medical programs; or]

([e]b) [The]An enrollee who completes a review within three months of case closure as outlined in Section R414-308-6[.]; or

(c) A member of a federally recognized tribe.

(5) [A resource test is not required]The eligibility agency does not require a resource test.

R414-311-5. Application, Eligibility Reviews and Improper Medical Assistance.

(1) Unless otherwise stated, the provisions of Rule R414-308 apply to all applicants and enrollees.

(2) Subject to the provisions of Subsection R414-311-5(3), an individual who is determined eligible shall receive 12 months of coverage that begins with the first month of enrollment.

(3) [Coverage]Before the end of the 12-month certification period, the eligibility agency may terminate eligibility [for Targeted Adult Medicaid may end before the end of the 12 month certification period]if the individual:

(a) turns 65 years old;

(b) moves out of state;

(c) becomes eligible for another Medicaid program;

(d) enters a public institution or an institution for mental disease, except as described in Section R414-302-6;

(e) is convicted of fraud[; or]

(f) leaves the household[; or]

(g) is eligible for or receives Medicare.

(4) An individual who leaves prison, jail, or the Utah State Hospital must submit an application within 60 days of release or discharge.

(5) An enrollee must verify at each review, that [he]the enrollee meets the criteria of a coverage group, as defined in Section R414-311-2. An enrollee who no longer meets criteria of a coverage group is no longer eligible for Targeted Adult Medicaid.

NOTICES OF PROPOSED RULES

KEY: Medicaid, Targeted Adult Medicaid, eligibility
Date of Enactment or Last Substantive Amendment: [August 29, 2019] 2020
Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R414-312	Filing No.
Ref (R no.):		52479

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 North 1460 West, Salt Lake City, UT	
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:

Adult Expansion Medicaid

3. Purpose of the new rule or reason for the change
 (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The purpose of these changes is to increase the income limit for the Adult Expansion coverage group and to clarify the hierarchy of medical programs.

4. Summary of the new rule or change:

In accordance with the 1115 Demonstration Waiver, the income limit will increase from 95% federal poverty level (FPL) to 133% FPL for the Adult Expansion coverage group. This amendment also clarifies that the Targeted Adult Medicaid program is the program of choice over the Adult Expansion program.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is an anticipated cost of about \$476,900,000 to the state budget.

B) Local governments:

There is no impact on local governments because they neither fund nor provide services under the Adult Expansion Medicaid program.

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

With the expansion of adult coverage, small businesses may see a portion of annual revenue based on the total amount of \$476,900,000.

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

With the expansion of adult coverage, non-small businesses may see a portion of annual revenue based on the total amount of \$476,900,000.

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):

With the expansion of adult coverage, Medicaid providers may see a portion of annual revenue based on the total amount of \$476,900,000. Eligible adult members may also see out-of-pocket savings based on that amount.

F) Compliance costs for affected persons:

Medicaid expansion members, who do not meet an exemption and fail to comply with CE or ESI requirements, will lose their Medicaid coverage.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$476,900,000	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$476,900,000	\$0
Fiscal Benefits			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$143,070,000	\$0
Non-Small Businesses	\$0	\$166,920,000	\$0
Other Persons	\$0	\$166,910,000	\$0
Total Fiscal Benefits	\$0	\$476,900,000	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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:

Businesses will see a share of revenue with the expansion of Adult Medicaid coverage.

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	Pub L. No. 111-148
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule **MAY** become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee,	Joseph K. Miner, MD, Executive Director	Date:	01/06/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-312. Adult Expansion Medicaid.****R414-312-4. General Eligibility Requirements.**

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to all applicants and enrollees.

(1) The following individuals are not eligible for Adult Expansion Medicaid:

(a) Individuals eligible for any Medicaid program without a spenddown, with the exception of the Targeted Adult Medicaid program; or

(b) Individuals eligible for or receiving Medicare.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Adult Expansion Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Adult Expansion Medicaid.

(b) An individual may only enroll in Adult Expansion Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency may only enroll applicants during an open enrollment period. The Department may limit the number it enrolls and may stop enrollment at any time.

(4) The eligibility agency shall waive the open enrollment requirement if the enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

R414-312-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Adult Expansion Medicaid, the individual must have countable income at or below [95]133% of the federal poverty level (FPL).

KEY: Medicaid, adult expansion, eligibility

Date of Enactment or Last Substantive Amendment: [August 29, 2019]2020

Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R590-102	Filing No.
Ref (R no.):		52500

NOTICES OF PROPOSED RULES

Agency Information

1. Department:	Insurance	
Agency:	Administration	
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 or section catchline:

Insurance Department Fee Payment Rule

3. Purpose of the new rule or reason for the change
(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?:)

The Legislature passed H.B. 370 during the 2019 General Session, which requires pharmacy benefit managers to be licensed by the Insurance (Department). This rule is being amended to include licensing fees for pharmacy benefit managers.

4. Summary of the new rule or change:

The change adds licensing fees for pharmacy benefit managers, renames subsequent sections, and updates the severability section of the rule to reflect the Department's current language.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The administrative cost of processing licenses for pharmacy benefit managers is expected to be approximately \$250 per year.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes only affect the relationship between the Department and its licensees.

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

There is no anticipated cost or savings to small businesses. Pharmacy benefit managers are generally larger businesses with more than 50 employees. If any small-business pharmacy benefit managers enter Utah's market, they will have the same costs as larger businesses. Those costs are the \$1,000 application and renewal fees and whatever nominal business costs they incur when applying and renewing. The Department expects that the pharmacy benefit managers that apply will be large.

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

The cost to obtain and renew a pharmacy benefit manager is an annual \$1,000 fee. Non-small businesses may also incur administrative costs when applying for or renewing a license. The Department cannot estimate what those costs may be, but they are expected to be nominal.

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

There is no anticipated cost or savings to any other persons. The changes only affect the relationship between the Department and its licensees.

F) Compliance costs for affected persons:

The cost to obtain and renew a pharmacy benefit manager is an annual \$1,000 fee.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$250	\$250	\$250
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$36,000	\$37,000	\$38,000
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$36,250	\$37,250	\$38,250
Fiscal Benefits			

State Government	\$36,000	\$37,000	\$38,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$36,000	\$37,000	\$38,000
Net Fiscal Benefits	\$(250)	\$(250)	\$(250)

H) Department head approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

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

The Department expects to license 36 pharmacy benefit managers in FY2020. At a cost of \$1,000 per license, the total impact to non-small businesses will be \$36,000, and the cost to the State will be approximately \$250 to process those licenses. The Department does not have enough data at this time to accurately forecast the next two fiscal years. However, the Department expects to license at least one company in each of the next two fiscal years.

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

Todd E. Kiser, Insurance Commissioner

Citation Information

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

Section 31A-3-103		
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020	
B) A public hearing (optional) will be held:		
On: 01/22/2020	At: 11:00 AM	At: State Office Building, 450 N State Street, Room 3110, Salt Lake City, UT

10. This rule change MAY become effective on:	03/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	Date:	01/15/2020
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R590. Insurance, Administration.

R590-102. Insurance Department Fee Payment Rule.

R590-102-1. Authority.

This rule is adopted pursuant to Subsection 31A-3-103(3), which requires the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

- (1) The purposes of this rule are to:
 - (a) publish the schedule of fees approved by the legislature;
 - (b) establish fee deadlines; and
 - (c) disclose this information to licensees and the public.
- (2) The rule applies to:
 - (a) all persons engaged in the business of insurance in Utah;
 - (b) all licensees;
 - (c) applicants for licenses, registrations, certificates, or other similar filings; and
 - (d) all persons requesting services provided by the department for which a fee is required.

R590-102-3. Definitions.

In addition to the definitions in Title 31A, the following definitions shall apply for the purposes of this rule:

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

- (2) "Agency" means:
 - (a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

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(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, sponsored captive, and special purpose financial captive.

(4) "Deadline" means the final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order, and

(b) by which

(i) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(ii) required information must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the commissioner, by statute, or by rule and approved by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider and health discount program.

(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.

(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the postmark date, if delivered by mail;

(c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through [23]24, shall be due when service is requested, if applicable, otherwise by the due date on the invoice.

(2) Payment.

(a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.

(b) Check.

(i) Checks shall be made payable to the Utah Insurance Department.

(ii) A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided.

(iii) Late fees and other penalties, resulting from the voided action will apply until proper payment is made.

(iv) A check payment that is dishonored is a violation of this rule.

(c) Cash. The department is not responsible for unreceipted cash that is lost or misdelivered.

(d) Electronic.

(i) Credit Card.

(A) Credit cards may be used to pay any fee due to the department.

(B) Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties, resulting from the voided action, will apply until proper payment is made.

(D) A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH).

(A) Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information.

(B) Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties resulting from the voided action will apply until proper payment is made.

(D) An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See R590-102-[20]21.

R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.

(1) Annual license fees:

(a) certificate of authority, initial license application - due with license application: \$1,000;

(b) certificate of authority - renewal - due by the due date on the invoice: \$300;

- (c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: \$350;
- (d) certificate of authority - reinstatement - due with application for reinstatement: \$1,000.
- (2) Other license fees:
 - (a) certificate of authority - amendments - due with request for amendment: \$250;
 - (b)(i) Form A - application for merger, acquisition, or change of control, due with filing: \$2,000.
 - (ii) Expenses incurred for consultant services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;
 - (c) redomestication filing - due with filing: \$2,000; and
 - (d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: \$1,000.
- (3) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:
 - (a) filing annual statement and report of Utah business - due annually on March 1;
 - (b) filing holding company registration statement - Form B;
 - (c) filing application for material transactions between affiliated companies - Form D;
 - (d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and
 - (e) application for individual license to solicit in accordance with the stock solicitation permit.
- (4) Annual service fee:
 - (a) Due annually by the due date on the invoice.
 - (b) A prescription drug plan is exempted from payment of a service fee.
 - (c) The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.
 - (d) Fee schedule:
 - (i) \$0 premium volume: no service fee;
 - (ii) more than \$zero but less than \$1 million in premium volume: \$700;
 - (iii) \$1 million but less than \$3 million in premium volume: \$1,100;
 - (iv) \$3 million but less than \$6 million in premium volume: \$1,550;
 - (v) \$6 million but less than \$11 million in premium volume: \$2,100;
 - (vi) \$11 million but less than \$15 million in premium volume: \$2,750;
 - (vii) \$15 million but less than \$20 million in premium volume: \$3,500; and
 - (viii) \$20 million or more in premium volume: \$4,350.
 - (e) The annual service fee includes the following services for which no additional fee is required:
 - (i) filing of amendments to articles of incorporation, charter, or bylaws;
 - (ii) filing of power of attorney;
 - (iii) filing of registered agent;
 - (iv) affixing commissioner's seal and certifying any paper;
 - (v) filing of authorization to appoint and remove agents;
 - (vi) filing of producer/agency appointment with an insurer - initial;

- (vii) filing of producer/agency appointment with an insurer - termination;
- (viii) report filing, all lines of insurance;
- (ix) rate filing, all lines of insurance; and
- (x) form filing, all lines of insurance.
- (f) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.
- (5) Other fees:
 - (a) e-commerce fee: see R590-102-[22]23; and
 - (b) insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-6. Foreign Surplus Lines Insurer, Accredited Reinsurer, Certified Reinsurer, Trusted Reinsurer, and Employee Welfare Fund Administrative/Service Fees.

- (1) Initial Fee - due with application: \$1,000.
- (2) Annual Fee - due annually by the due date on the invoice: \$500;
- (3) Late annual payment - due for any annual payment paid after the due date on the invoice: \$550;
- (4) Reinstatement - due with application: \$1,000.
- (5) The annual fee includes the following services for which no additional fee is required and is paid in advance:
 - (a) filing of power of attorney; and
 - (b) filing of registered agent.
- (6) E-commerce fee: see R590-102-[22]23.

R590-102-7. Other Organization Fees.

- (1) Annual license fee:
 - (a) initial - due with application: \$250;
 - (b) renewal - due annually by the due date on the invoice: \$200;
 - (c) late renewal - due for any renewal paid after the date on the invoice: \$250;
 - (d) reinstatement - due with application for reinstatement: \$250;
 - (e) The annual other organization initial or renewal fee includes the risk retention group annual statement filing - due annually on March 1.
- (2) Annual service fee - due annually by the due date on the invoice: \$200.
 - (a) The annual service fee includes the following services for which no additional fee is required:
 - (i) filing of power of attorney;
 - (ii) filing of registered agent; and
 - (iii) rate, form, report or service contract filing.
 - (b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.
- (3) E-commerce fee: see R590-102-[22]23.

R590-102-8. Captive Insurer Fees.

- (1) Initial license application - due with license application: \$200.
- (2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.
- (3) Annual license fees:
 - (a) initial - due by the due date on the invoice: \$5,000;
 - (b) renewal - due by the due date on the invoice: \$5,000;

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- (c) late renewal - due for any renewal paid after the date on the invoice: \$5,050;
- (d) reinstatement - due with application for reinstatement: \$5,050.
- (4) Other fees:
 - (a) e-commerce fee: see R590-102-[22]23; and
 - (b) examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-9. Captive Cell Fees.

- (1) Initial license application - due with license application: \$200.
- (2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.
- (3) Annual license fees:
 - (a) initial - due by the due date on the invoice: \$1,000;
 - (b) renewal - due by the due date on the invoice: \$1,000;
 - (c) late renewal - due for any renewal paid after the date on the invoice: \$1,050.

R590-102-10. Life Settlement Provider Fees.

- (1) Annual license fees:
 - (a) initial - due with application: \$1,000;
 - (b) renewal - due by the due date on the invoice: \$300;
 - (c) late renewal - due for any renewal paid after the date on the invoice: \$350;
 - (d) reinstatement - due with reinstatement application: \$1,000.
- (2) Annual service fee - due by the due date on the invoice: \$600.
 - (a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.
 - (b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.
- (3) Other fees:
 - (a) e-commerce fee: see R590-102-[22]23; and
 - (b) examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-11. Professional Employer Organization (PEO) Fees.

- (1) Annual license fees:
 - (a) PEO - not certified by an assurance organization:
 - (i) initial - due with application: \$2,000;
 - (ii) renewal - due by the due date on the invoice: \$2,000;
 - (iii) late renewal - due for any renewal paid after the date on the invoice: \$2,050;
 - (iv) reinstatement - due with reinstatement application: \$2,050;
 - (b) PEO - certified by an assurance organization:
 - (i) initial - due with application: \$2,000;
 - (ii) renewal - due by the due date on the invoice: \$1,000;
 - (iii) late renewal - due for any renewal paid after the date on the invoice: \$1,050;
 - (iv) reinstatement - due with reinstatement application: \$1,050;
 - (c) PEO - small operator:
 - (i) initial - due with application: \$2,000;

- (ii) renewal - due by the due date on the invoice: \$1,000;
- (iii) late renewal - due for any renewal paid after the date on the invoice: \$1,050;
- (iv) reinstatement - due with reinstatement application: \$1,050.
- (5) E-commerce fee: see R590-102-[22]23.

R590-102-12. Individual Resident and Non-Resident License Fees, Other Than Individual Navigators.

- (1) Biennial resident and non-resident full-line individual initial license or renewal fee:
 - (a) initial license fee - due with application: \$70;
 - (b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$70;
 - (c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$120.
- (2) Biennial resident and non-resident limited-line individual initial or renewal license fee:
 - (a) initial license fee - due with application: \$45;
 - (b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$45;
 - (c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$95.
- (3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$25.
- (4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:
 - (a) issuance of letter of certification;
 - (b) issuance of letter of clearance;
 - (c) issuance of duplicate license;
 - (d) individual continuing education services.
- (5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.
- (6) Other fees:
 - (a) e-commerce fee: see R590-102-[22]23; and
 - (b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: \$25.

R590-102-13. Individual Navigator.

- (1) Individual navigator per annual license period:
 - (a) initial license fee - due with application: \$35;
 - (b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$35;
 - (c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$60.
- (2) The annual initial and renewal individual license fee includes the following services for which no additional fee is required:
 - (a) issuance of letter of certification;
 - (b) issuance of letter of clearance;
 - (c) issuance of duplicate license; and
 - (d) individual continuing education services.
- (3) The annual initial and renewal individual license fee includes will provide during the year. The fee is paid in advance of providing the services.
- (4) E-commerce fee: see R590-102-[22]23.

R590-102-14. Agency License Fees, Other than Navigator or Bail Bond Agencies.

- (1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:
- initial license fee - due with application: \$75;
 - renewal license fee if renewed prior to license expiration date - due with renewal application: \$75;
 - reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$125;
 - resident title license:
 - initial license fee - due with application: \$100;
 - renewal license fee, if renewed prior to license expiration date - due with renewal application: \$100.
 - reinstatement license fee, if reinstated within one year following the license inactivation date - due with application for reinstatement: \$150.
- (2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$25.
- (3) The biennial initial and renewal agency license fee includes the following services for which no additional fee is required:
- issuance of letter of certification;
 - issuance of letter of clearance;
 - issuance of duplicate license;
 - filing of producer designation to agency license - initial;
 - filing of producer designation to agency license - termination;
 - filing of amendment to agency license; and
 - filing of power of attorney.
- (4) E-commerce fee: see R590-102-[22]23.

R590-102-15. Navigator Agency.

- (1) Navigator agency per annual license period:
- initial license fee - due with application: \$40;
 - renewal license fee if renewed prior to license expiration date - due with renewal application: \$40;
 - reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$65.
- (2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:
- issuance of letter of certification;
 - issuance of letter of clearance;
 - issuance of duplicate license;
 - filing of producer designation to agency license - initial;
 - filing of producer designation to agency license - termination;
 - filing of amendment to agency license; and
 - filing of power of attorney.
- (3) E-commerce fee: see R590-102-[22]23.

R590-102-16. Bail Bond Agency.

- (1) Annual bail bond agency per annual license period:
- initial license fee - due with application: \$250;
 - renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;
 - reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

- issuance of letter of certification;
- issuance of letter of clearance;
- issuance of duplicate license;
- filing of producer designation to agency license - initial;
- filing of producer designation to agency license - termination;
- filing of amendment to agency license; and
- filing of power of attorney.

R590-102-17. Continuing Care Provider.

- (1) Annual registration fee:
- initial - due with application: \$6,900;
 - renewal - due by the due date on the invoice: \$6,900;
 - reinstatement - due with application for reinstatement: \$6,950.
- (2) Disclosure statement:
- initial - due with application: \$600;
 - renewal - due with annual renewal disclosure statement: \$600.
- (3) E-commerce fee: see R590-102-[22]23.

R590-102-18. Pharmacy Benefit Manager Licensing.

- (1) Annual pharmacy benefit manager license fee:
- initial license fee due on the date of the application: \$1,000;
 - renewal -- due by the due date on the invoice with renewal application: \$1,000;
 - late renewal -- due for any renewal paid after the date on the invoice: \$1,050;
 - reinstatement -- due on the date of application: \$1,000.
- (2) E-commerce fee: see R590-102-23.

R590-102-19. Guaranteed Asset Protection.

- (1) Annual guaranteed asset protection provider registration fee per annual period:
- initial - due with application: \$1,000;
 - renewal - due by the due date on the invoice: \$1,000; and
 - late renewal - due for any renewal paid after the date on the invoice: \$1,050.
- (2) Annual guaranteed asset protection retail seller assessment per annual period:
- annual assessment - due by the due date on the invoice: \$50; and
 - late fee - due for any retail seller assessment fee paid after the due date on the invoice: \$50.

R590-102-[19]20. Continuing Education Fees.

- (1) Annual continuing education provider license fees per annual license period:
- initial license fee - due with application: \$250;
 - renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;
 - reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.

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(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$25.

R590-102-[20]21. Non-electronic Processing or Payment Fees.

(1) Non-electronic filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper non-electronic filing or by the due date on the invoice: \$5.

(2) Non-electronic application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper non-electronic application or by the due date on the invoice: \$25.

(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: \$25.

R590-102-[24]22. Dedicated Fees.

The following are fees dedicated to specific uses:

(1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;

(b) late fee - due for any fraud assessment fee paid after the due date on the invoice: \$50;

(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;

(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:

(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: \$15;

(b) agency title licensee applicant - due with the initial application: \$1,000;

(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:

(i) Band A: \$0 to \$1 million: \$125;

(ii) Band B: more than \$1 million to \$10 million: \$250;

(iii) Band C: more than \$10 million to \$20 million: \$375;

(iv) Band D: more than \$20 million: \$500;

(4)(a) relative value study book fee - due when book purchased or by invoice due date: \$10;

(b) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice;

(5)(a) code book - due when book purchased or by invoice due date: \$57;

(b) mailing fee for books - due if book is to be mailed to purchaser: \$3;

(6) fingerprint fee - due with application for individual license:

(a) Bureau of Criminal Investigation (BCI): \$15; and

(b) Federal Bureau of Investigation (FBI): \$13.25;

(7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice.

R590-102-[22]23. Electronic Commerce Dedicated Fees.

(1) Electronic commerce, e-commerce, and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the initial, annual, renewal, or reinstatement application: \$75;

(b) captive insurer - due with the initial, annual renewal, or reinstatement application: \$250;

(c) other organization including professional employer organization, continuing care provider, pharmacy benefit manager and life settlement provider - due with the initial, annual renewal, or reinstatement application: \$50;

(d) continuing education provider - due with the initial, annual renewal, or reinstatement application: \$20;

(e) agency - due with the initial, biennial renewal, or reinstatement application: \$10; and

(f) individual - due with the initial, biennial renewal, or reinstatement application: \$5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: \$3 per transaction;

(b) rate and form filing database access to an electronic public rate and form filing:

(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);

(ii) each line of insurance accessed is charged the following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD: \$45;

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time: \$45;

(iii) additional DVD: \$2;

(iv) payment due at time of service or by the due date on the invoice.

R590-102-[23]24. Other Fees.

(1) Photocopy fee - per page: \$0.50.

(2) Complete annual statement copy fee - per statement: \$40.

(3) Fee for accepting service of legal process: \$10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: \$1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor -- due with request for information: \$50;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - due by the due date on the invoice: \$50;

(iii) additional CD - due by the due date on the invoice: \$1.

(5) Returned check fee: \$20.

(6) Workers compensation loss cost multiplier schedule: \$.5.

(7) Address correction fee - assessed when department has to research and enter new address for a licensee - due by the due date on the invoice: \$35.

(8) Independent Review Organization. Initial application fee - due with application: \$250.

(9) Withdrawal from writing a line of insurance or reducing total annual premium volume by 75% or more - due with plan of orderly withdrawal submission: \$50,000.

(10) Administrative disciplinary action removal from public access on Insurance Department controlled website - due with application: \$185.

R590-102-[24]25. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance fees

Date of Enactment or Last Substantive Amendment: [March 26, 2019]2020

Notice of Continuation: December 12, 2016

Authorizing, and Implemented or Interpreted Law: 31A-3-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R590-160-9	Filing No.
Ref (R no.):		52490

Agency Information

1. Department:	Insurance	
Agency:	Administration	
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 or section catchline:

Agency Review

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

(If this is a new rule, what is the purpose of the rule? If

this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

These changes are being made to correct phrase and rule references, and to make it clear that any party can seek a stay on a Request for Agency Review.

4. Summary of the new rule or change:

The rule is being amended to update the preferred term for a Request for Agency Review, to clarify a phrase regarding opposition to a stay, and to make a number of changes to references within the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.

B) Local governments:

There is no anticipated cost or savings to local governments. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.

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

There is no anticipated cost or savings to small businesses. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.

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

There is no anticipated cost or savings to non-small businesses. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.

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

There is no anticipated cost or savings to any other persons. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.

F) Compliance costs for affected persons:

There are no compliance costs for any 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.)

NOTICES OF PROPOSED RULES

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Commissioner of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Todd E. Kiser, Insurance Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
Section 31A-2-201 Section 63G-4-102 Section 63G-4-203

Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:	03/09/2020
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NOTE: The date above is the date on which this rule **MAY** become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	Date:	01/13/2020
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R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-9. Agency Review.

(1) Agency review of an adjudicative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to R590-160-[7]§(1), shall be available to any party to the proceeding by filing a Request for Agency Review [petition for review] with the commissioner within 30 days of the date of the order. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) A request for agency review shall be filed in accordance with Section 63G-4-301.

(3) The review shall be conducted by the commissioner or the commissioner's designee. The designee shall not be the presiding officer who issued the decision under review. If the review is conducted by a designee, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and include a copy of the order, which is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request.

(c) The request for agency review may include:

(i) supporting argument;

(ii) citation to appropriate legal authority

(iii) any reference to the relevant portion of the record developed during the formal adjudicative proceeding under review; or

(iv) reference to the relevant portion of the Department's files, and other evidence or proffers of evidence received during the informal adjudicative proceeding under review.

(d) If a party challenges a finding of fact in the order subject to review, the party shall demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence in the formal adjudicative proceeding under review; or

(ii) based on the Department's files and declarant's testimony, that the finding is not supported by substantial evidence in the informal adjudicative proceeding under review.

(e) If a party challenges a legal conclusion in the order subject to review, the party shall support its argument with citation to any relevant authority and also:

(i) cite the portion of the record which is relevant to that issue in the formal adjudicative proceeding under review; or

(ii) cite the portion of the record which is relevant to that issue based upon the evidence in the Department's files, facts appearing in the Department's files and verified by a declarant testimony, and facts presented in evidence or proffers of evidence received in the informal adjudicative proceeding under review.

(f)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the recording relevant to such finding or conclusion to be prepared in the formal adjudicative proceeding under review, in accordance with R590-160-[6]7(5)(a) and (b); or

(B) provide a statement in its request for agency review that no transcript or recording is available in the informal adjudicative proceeding under review.

(ii) In a request for agency review under R590-160-[8]9(4)([e]f)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the presiding officer when the transcript is available for filing.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The presiding officer may waive the requirement of preparation of a written transcript and permit citation to the recording of such adjudicative proceeding upon motion and a reasonable showing that such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(5) Request for Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) [The Department may oppose.] An opposition to the request for a stay shall be made in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the presiding officer shall review the request, any opposing memorandum, the findings of fact, conclusions of law, and order and determine whether a stay is in the best interest of the public. If it is determined to be in the best interest of the public to issue a stay, the presiding officer may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The presiding officer may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The presiding officer may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order.

(b)(i) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the Department.

(ii) If a transcript is unavailable or waived by the presiding officer pursuant to R590-160-[8]9(4)(f)(iv), any supporting memoranda to the request for agency review shall be filed with the request.

(c) Any opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(d) After the filing of an opposing memorandum, a reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The presiding officer may order or permit oral argument if determined to be warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further adjudicative proceeding or hearing.

(10) Failure to comply with R590-160-[8]9 may result in dismissal of the request for agency review.

KEY: insurance

Date of Enactment or Last Substantive Amendment: **[August 14, 2018]2020**

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: **31A-2-201; 63G-4-102; 63G-4-203**

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R590-284	Filing No.
Ref (R no.):	52489	

Agency Information

1. Department:	Insurance
Agency:	Administration
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

NOTICES OF PROPOSED RULES

Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule or section catchline:

Corporate Governance Annual Disclosure Rule

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

During the 2019 General Session, the Legislature enacted the Corporate Governance Annual Disclosure Act (H.B. 55). The Act requires domestic insurers to provide to the Insurance Commissioner information about their corporate governance. The Act authorizes the Commissioner to promulgate rules that specify the types of information to be provided. This proposed rule identifies that information. The Act and the rule aid in the financial regulation of insurers because proper corporate governance promotes solvency. In order to be accredited by the National Association of Insurance Commissioners, the Utah Insurance Department (Department) must have the Act and this rule in force.

4. Summary of the new rule or change:

This rule describes the process for submitting a corporate governance disclosure report. It identifies specific information that must be disclosed in the following categories: governance framework and structure; governance policies and practices of the Board and its committees; policies and practices for governing senior management; oversight and management of critical risk areas that affect business.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The Department's financial analysts estimate that it will take a minimal amount of effort to review the information in the corporate governance report. Therefore, this rule will have no fiscal impact on the Department.

B) Local governments:

There is no anticipated cost or savings to local governments. The rule describes the relationship between the Department and its licensees and does not involve local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
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There is no anticipated cost or savings to small businesses. The rule describes the relationship between the Department and the insurance companies that are licensed by it. These insurance companies are all non-small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
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Many insurers currently provide a good portion of the required corporate governance information in other submissions to the Department. Those insurers may simply reference the other submissions, rather than duplicate them, in their corporate governance disclosure reports. Depending on the amount of information that has already been provided, the Department estimates that it will take an average of 4 hours at \$50 per hour for a total cost of \$200 to complete the initial report. Because the report includes information that will not likely change from year-to-year (number of directors and board meetings, length of director terms, standards for evaluating management), updates in future years will require less time and fewer resources. To reduce costs further, the Department will issue a suggested form or outline to assist an insurer in drafting a report.

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):
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There are no anticipated costs or savings for any other persons. The rule describes the relationship between the Department and its licensees and does not involve any other persons.

F) Compliance costs for affected persons:

Many insurers currently provide a good portion of the required corporate governance information in other submissions to the Department. Those insurers may simply reference the other submissions, rather than duplicate them, in their corporate governance disclosure reports. Depending on the amount of information that has already been provided, the Department estimates that it will take an average of 4 hours at \$50 per hour for a total cost of \$200 for each insurer to complete the initial report. Utah has 45 domestic insurers, which will result in a total fiscal impact of \$9,000. Because the report includes information that will not likely change from year-to-year (number of directors and board meetings, length of director terms, standards for evaluating management), updates in future years will require less time and fewer resources. The Department expects that future years will require only 1 hour for each insurer to review and submit previous reports, for a total fiscal cost of \$2,250. To reduce costs further, the Department will issue a

suggested form or outline to assist an insurer in drafting a report.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$9,000	\$2,250	\$2,250
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$9,000	\$2,250	\$2,250
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(9,000)	\$(2,250)	\$(2,250)

H) Department head approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

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

The above analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses. Since most of the information in the new report can be compiled from other reports that are already provided to the Department, it is expected that compliance costs for insurers will be minimal.

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

Todd E. Kiser, Insurance Commissioner

Citation Information

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

Subsection 31A-2-201(3)(a)	Section 31A-16b-104
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Public Notice Information

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

A) Comments will be accepted	03/02/2020 until:
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10. This rule change MAY become effective on: 03/09/2020

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, Information and title:	Steve Gooch, Information Specialist	Date:	01/13/2020
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R590. Insurance, Administration.

R590-284. Corporate Governance Annual Disclosure Rule.

R590-284-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which authorizes rules to implement the Insurance Code, and Section 31A-16b-104, which authorizes rules to implement the Corporate Governance Annual Disclosure Act at Title 31A, Chapter 16b.

R590-284-2. Purpose.

This rule sets forth the filing procedures and the content requirements for the Corporate Governance Annual Disclosure (CGAD) required by Title 31A, Chapter 16b.

R590-284-3. Definitions.

(1) The definitions in Section 31A-1-301 apply to this rule.

NOTICES OF PROPOSED RULES

(2) "Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Procurement Officer, Chief Legal Officer, Chief Information Officer, Chief Technology Officer, Chief Revenue Officer, Chief Visionary Officer, or any other "C" level executive.

R590-284-4. Filing Procedures.

(1) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by these regulations. The insurer or insurance group has discretion to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(2) An insurer or insurance group may comply with this rule by referencing other existing documents, for example, ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in R590-284-5. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(3) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

R590-284-5. Contents of the CGAD.

(1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, because these may provide a means to demonstrate the strengths of their governance framework and practices.

(2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(a) The insurer's board of directors (Board) and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs, for example, ultimate control level, intermediate holding company, legal entity. The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and

(b) The duties of the Board and each of its significant committees and how they are governed, for example bylaws, charters, informal mandates, as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

(3) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following:

(a) how the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group;

(b) how an appropriate amount of independence is maintained on the Board and its significant committees;

(c) the number of meetings held by the Board and its significant committees over the past year as well as information on director attendance;

(d) how the insurer or insurance group identifies, nominates and elects members to the Board and its committees including, for example:

(i) whether a nomination committee is in place to identify and select individuals for consideration;

(ii) whether term limits are placed on directors;

(iii) how the election and re-election processes function;

(iv) whether a Board diversity policy is in place and if so, how it functions;

(e) the processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any Board or committee training programs that have been put in place.

(4) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

(a) any processes or practices, for example, suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(i) identification of the specific positions for which suitability standards have been developed and a description of the standards employed;

(ii) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;

(b) the insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(i) compliance with laws, rules, and regulations; and

(ii) proactive reporting of any illegal or unethical behavior;

(c) the insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of:

(i) the general objectives of significant compensation programs;

(ii) what the programs are designed to reward;

(iii) how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking, including a discussion of:

(A) the Board's role in overseeing management compensation programs and practices;

(B) the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) how compensation programs are related to both company and individual performance over time;

(D) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;

(F) any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees;

(d) the insurer's or insurance group's plans for CEO and Senior Management succession.

(5) The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(a) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;

(b) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;

(c) How reporting responsibilities are organized for each critical risk area.

(i) The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board.

(ii) This description may include, for example, the following critical risk areas of the insurer:

(A) risk management processes, such as an ORSA Summary Report pursuant to Title 31A, Chapter 16a;

(B) actuarial function;

(C) investment decision-making processes;

(D) reinsurance decision-making processes;

(E) business strategy/finance decision-making processes;

(F) compliance function;

(G) financial reporting/internal auditing; and

(H) market conduct decision-making processes.

R590-284-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: corporate governance disclosure

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-16b-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R651-301	Filing No. Ref (R no.):	52477
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Agency Information

1. Department:	Natural Resources
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Agency:	Parks and Recreation
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Street address:	1594 West North Temple
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City, state:	Salt Lake City, UT
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Mailing address:	PO Box 295
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City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information

2. Rule or section catchline:

State Recreation Fiscal Assistance Programs

3. Purpose of the new rule or reason for the change
(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

During the 2018 General Session, H.B. 143 was passed, which provides a shift of funding directed towards the Off-Highway Vehicle Restricted Account. H.B. 143 (2018) directed additional funding, from registration fee restructuring, to be allocated for motorized vehicle opportunities with the counties, state, and federal agencies, and non-profit Off-Highway Vehicle (OHV) club/organizations through a grant process format. Some changes were made in January of 2019, but some of the information was left out of those changes from the Utah State Parks and Recreation Board approval. These additional changes are shown in this amendment. Rule R651-301 hadn't, previous to January 2019, had a language cleanup in over ten years and some of the grants listed are obsolete and/or are no longer funded.

4. Summary of the new rule or change:

This amendment is a language cleanup and is due to the H.B. 143 (2018) which increased the amount of funding provided to the OHV program from registration fees collected. The language cleanup eliminates non-existing fiscal assistance programs and updates a current fiscal assistance program.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no cost or savings due to this amendment to the state budget. This rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide language update for an existing fiscal assistance program.

B) Local governments:

This amendment does not affect local governments as this rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide

NOTICES OF PROPOSED RULES

language update for an existing fiscal assistance program.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There are no costs to small businesses as this rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide language update for an existing fiscal assistance program.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide language update for an existing fiscal assistance program, so there are no costs to non-small businesses.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
This rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide language update for an existing fiscal assistance program.			
F) Compliance costs for affected persons:			
There is no increase in compliance costs for affected persons because this rule is updated to reflect previous fiscal assistance funding programs that no longer exist and to provide language update for an existing fiscal assistance program.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits			

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

No expected impact on businesses.

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

Brian Steed, Executive Director

Citation Information

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

Section 41-22-1 | Section 41-22-19

Public Notice Information

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

A) Comments will be accepted until: 03/02/2020

10. This rule change MAY become effective on: 03/09/2020

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,	Jeff Rasmussen, Division Director	Date:	01/02/2020
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R651. Natural Resources, Parks and Recreation.

R651-301. State Recreation Fiscal Assistance Programs.

R651-301-1. Authority and Effective Date.

(a) These rules are established pursuant to Section 41-22-1, and Section 41-22-19, and apply to the following state funded recreation fiscal assistance programs:

- (1) Off Highway Vehicles Fiscal Incentive Grant
- (2) Off-highway Access and Education

(b) These rules govern procedures for fiscal assistance applications, priorities, and project selection criteria commencing on or after April 15, 2000.

R651-301-2. Definitions.

- (a) "Advisory Council" means Off-Highway Vehicle Advisory Council.
- (b) "Board" means the Utah Board of Parks and Recreation.
- (c) "Division" means the Utah Division of Parks and Recreation.
- (d) "OHV Program" means the Off-Highway Vehicle Program of the Utah Division of Parks and Recreation.
- (e) "Small Grant" means any request of less than \$12,500.

R651-301-3. Fiscal Assistance Application Process.

(a) Deadline for submission of applications is May 1 annually, except for Small Grant applications, which have deadlines of January 15, April 15, July 15, and October 15 annually. Submissions post-marked on or before that date will be eligible for funding consideration.

(b) Applications are to be submitted on a form to be provided by the Division. [Eligible applicants will be notified by mail of the application deadline and procedures at least 45 days prior to the deadline.]

- (c) Applications must be submitted to:
Utah Division of Parks and Recreation
Attention: Grants Coordinator
1594 West North Temple, Suite 116
Salt Lake City, Utah 84114-6001
- (d) Eligible applicants include:
 - (1) [Trails and Pathways Program]
 - (i) Federal government agencies
 - (ii) State agencies
 - (iii) Cities and towns
 - (iv) Counties
 - (v) Special Improvement Districts
 - (2) Off-Highway Vehicle Fiscal Incentive Grant Program
 - (i) Federal government agencies
 - (ii) State agencies
 - (iii) Cities and towns
 - (iv) Counties
 - (v) Organized User Group pursuant to 41-22-2(15)

[(3) Centennial Non Motorized Paths and Trail Crossings Program

- (i) State agencies
- (ii) Cities and towns
- (iii) Counties]

(2) Off-highway Access and Education Program

(i) Charitable organizations meeting the requirements pursuant to Subsection 41-22-19.5(6).

R651-301-4. Fiscal Assistance Program Requirements.

(a) Except as otherwise provided [herein] in R651-301, all programs may require [a 50/50] matching funds in an amount up to 50%.

(b) An applicant[s] match for the project may [be in the form of] include:

(1) cash[, force account labor,];

(2) equipment[,]; or

(3) materials[,], including donated material[s] and labor or donation of land from a third party to be exclusively used for the proposed project. The value of donated labor will be based on a general laborer rate, unless the person is professionally skilled in the work being performed on the project. When this is the case, the wage rate normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the project sponsor pays its own employees having similar experience and performing similar duties. Donated materials and land will be valued at the fair market value based on an appraisal that is approved by the Division.] valued at the fair market value based on an appraisal that is approved by the Division; or

(4) labor, including:

(i) donated labor based on a general laborer rate that the project sponsor pays an employee of similar experience and performing similar duties, or

(ii) professionally skilled labor based on a rate normally paid for performing this service; or

(5) donated land from a third party to be exclusively used for the proposed project valued at the fair market value based on an appraisal that is approved by the Division. When this is the case, the wage rate normally paid for performing this service may be charged to the project.

(c) Recreational trails that are on lands under the control of the Division must comply pursuant to Section 79-5-304[63-11a-203], and require public hearings in the area of proposed trail development.

(d) Program funds may be used for land acquisition, development, and planning. Off-highway vehicle funds may also be used for education, operation and maintenance. No administrative or indirect costs are allowed. Projects funded with Off-highway Access and Education Program funds must be designed to protect access to public lands by motor vehicle and off-highway vehicle operators, and to educate the public about appropriate off-highway vehicle use.

(i) Annual registration fees as provided in Section R651-406-1, the excess of \$18 per all-terrain vehicle, off-highway motorcycle, and street-legal all-terrain vehicle shall be dedicated to the Off-Highway Vehicle Fiscal Incentive Grant Program.

(ii) The Off-Highway Vehicle Fiscal Incentive Grant Program shall fund motorized trails pursuant to Subsection 41-22-19(1)(c) except for the following uses as they benefit off-highway vehicle recreation:

Administration by the OHV Program up to 7%

Access protection up to 20%

Search and rescue up to 5%

Tourism up to 5%

NOTICES OF PROPOSED RULES

Education up to 5%

Other uses that further the policy set forth pursuant to 41-22-
up to 5%

(iii) Projects funded with Off-highway Access and Education Program funds must be designed to protect access to public lands by motor vehicle and off-highway vehicle operators, and to educate the public about appropriate off-highway vehicle use.

(e) Not more than [50]75% of program funds may be advanced to the project sponsor, and only after official notice to the Division is made by the sponsor that project costs will be incurred within sixty days.

(f) [No more than 50% of the monies available to the Centennial Non Motorized Paths and Trail Crossings Program in a fiscal year may be allocated to a single project, except upon unanimous recommendation of the Recreational Trails Advisory Council.]

(g) [The balance of funding shall be provided to sponsors at the project completion, and only after a final accounting is made to the Division of total project costs.]

(h) Off-highway Access and Education Program funds are exempt from the matching requirements of this rule.

R651-301-5. Project Selection Procedures.

(a) Advisory Councils shall make recommendations to the Division concerning the project selection criteria and the priority of projects selected for funding.

(b) The Division shall review eligible applications, evaluate projects based on priority criteria, and submit project description information, proposed funding recommendations and justification to the appropriate Advisory Council for review and comments.

(c) The Board shall select and approve projects based on recommendations from the Division and Advisory Councils, which may be in the form of joint or separate recommendations.

R651-301-6. Priorities and Project Selection Criteria.

(a) Applicants shall be evaluated on administrative considerations, such as prior project performance and proper use of funds.

(b) Applications shall be evaluated on meeting legislative intent, and meeting outdoor recreation needs.

(c) Applications shall be evaluated on cooperative efforts of the project among agencies and user groups. This includes cooperative funding.

(d) Location of the proposed project site shall be evaluated based on proximity to the majority of users, adequacy of access to the site, safety, linking similar existing facilities, and convenience to users.

(e) Projects that promote multiple season use for maximum year-round participation and multiple uses or users.

(f) Planning, design, and projects for the Trails and Pathways Program shall be evaluated to encourage:

(1) Innovative or unique design features that enhance the environment and recreation opportunities.

(2) Linking access to natural, scenic, historic, or recreational areas of statewide significance.

(3) Minimizing adverse effects on wildlife, natural areas, and adjacent landowners.

(4) Harmony with existing and planned land uses.

(5) Master Planning.]

KEY: recreation, fiscal, assistance

Date of Enactment or Last Substantive Amendment: **[January 24, 2019]** 2020

Notice of Continuation: March 23, 2017

Authorizing, and Implemented or Interpreted Law: **41-22-1; 41-22-19**

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code	R653-2	Filing No.
Ref (R no.):	52473	

Agency Information

1. Department:	Natural Resources	
Agency:	Water Resources	
Room no.:	310	
Building:	Department of Natural Resources	
Street address:	1594 West North Temple	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 146201	
City, state, zip:	Salt Lake City, Utah 84114-6201	
Contact person(s):		
Name:	Phone:	Email:

Lindsay Russell 801-538-7235 lrrussell@utah.gov

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

General Information

2. Rule or section catchline:

Secondary Metering

3. Purpose of the new rule or reason for the change
(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)

The reason for the change is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

4. Summary of the new rule or change:

The change provides the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

\$68,729 -- The proposed rule changes will have a fiscal impact on the state, local governments, and small businesses. This is the result of setting a minimum term of 15 years on all types of loans. This will result in an

estimated cost to the state of \$22,095 in FY20, increasing a like amount in FY21 and FY22 as repayment amounts on a handful of additional projects decrease. The impact of this change on local governments and small businesses is a benefit of the same amount as their annual repayment amounts decrease.

B) Local governments:

The proposed rule changes will have a fiscal impact on the state, local governments, and small businesses. This is the result of setting a minimum term of 15 years on all types of loans. This will result in an estimated cost to the state of \$22,095 in FY20, increasing a like amount in FY21 and FY22 as repayment amounts on a handful of additional projects decrease. The impact of this change on local governments and small businesses is a benefit of the same amount as their annual repayment amounts decrease.

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

The proposed rule changes will have a fiscal impact on the state, local governments, and small businesses. This is the result of setting a minimum term of 15 years on all types of loans. This will result in an estimated cost to the state of \$22,095 in FY20, increasing a like amount in FY21 and FY22 as repayment amounts on a handful of additional projects decrease. The impact of this change on local governments and small businesses is a benefit of the same amount as their annual repayment amounts decrease.

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

The proposed rule change is not expected to have a significant impact on non-small businesses' (banks and other lending institutions) revenue or expenditures. Inestimable impacts to large businesses include potentially fewer market bonding opportunities. This is anticipated to be approximately one fewer bondable project that seeks market funding per year.

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

There are no persons in this category that will be impacted.

F) Compliance costs for affected persons:

Since there are no persons impacted, there are not costs to report.

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

this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$22,910	\$45,819	\$68,729
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$22,910	\$45,819	\$68,729
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$7,566	\$15,131	\$22,697
Small Businesses	\$15,344	\$30,688	\$46,031
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$22,910	\$45,819	\$65,729
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

The impact of changing the municipal interest rate was not analyzed because it is not possible to predict what interest rates will be over the course of the next three fiscal years. However, the impact for FY20 would likely be a small net cost to the state because the interest rate offered under the proposed rules (2.63% as of 9/17/19) would be lower than the rate offered by the board before (3%). If interest rate rise again and go above 3%, the impact to the state would be a net benefit.

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

Brian C. 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):

Title 73, Chapter 10		
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Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on: 03/09/2020

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:	Todd Adams, Director	Date:	01/14/2020
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R653. Natural Resources, Water Resources.**R653-2. Financial Assistance from the Board of Water Resources.****R653-2-1. Purpose.**

(1) The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state, and for utilizing the Water Infrastructure Restricted Account described in Title 73, Chapter 10g, Utah Code Annotated.

R653-2-2. Description of Revolving Loan Programs.

(1) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

(a) The Board will fund projects based on the following prioritization system:

(i) Projects which involve public health problems, safety problems, or emergencies.

(ii) Municipal water projects that are required to meet an existing or impending need.

(iii) Agricultural water projects that provide a significant economic benefit for the local area.

(iv) Projects which will receive a large portion of their funding from other sources.

(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first-come-first-served basis.

(b) The Board will not fund the following types of projects:

(i) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

(ii) Domestic water systems where fewer than 50% of the residents live in the project area year-round.

(iii) Projects sponsored by developers.

(iv) Projects sponsored by individuals or families.

(c) General guidelines of each of the Board's funding programs are:

(i) Revolving Construction Fund (RCF):

(A) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

(B) The RCF advances financial assistance to the following types of projects:

(1) Irrigation projects where the Board's share of the cost is less than \$1,000,000.

(2) Rural culinary projects where the Board's share of the cost is less than \$1,000,000 that involve mutual irrigation and water companies.

(3) Dam Safety Studies and Upgrades

(C) [The s]Staff will prepare a feasibility report, in which they will recommend repayment terms in the feasibility report it will prepare]. Interest will not be charged.

(ii) Cities Water Loan Fund (CWLF):

(A) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.

(B) [The s]Staff will prepare a feasibility report, in which they will recommend repayment terms and interest rates in the feasibility report it will prepare].

(iii) Conservation and Development Fund ([C and D]CDF):

(A) Through the [C and D]CDF, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.

(B) [The s]Staff will prepare a feasibility report, in which they will recommend repayment terms and interest rates in the feasibility report it will prepare].

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the Division. Staff may then determine whether or not it meets the Board's general guidelines and will request additional information as necessary before forwarding it on to the Board member [of the Board] residing in the river district in which the project is located for his or her signature. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division of Water Resources (Division) for action.

(2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

(3) An application form can be obtained from the [Division, a Board member, or the] Division's website (www.water.utah.gov).

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the [sponsor] applicant, forwarded to the Division, and signed by the Board member, [and forwarded to the Division,] a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) APPROVAL for Staff Investigation:

(i) The Board member considers the proposed project to fall within the Board's general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.

(b) AUTHORIZATION:

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the applicant[sponsor]. Therefore, representatives of the project applicant[sponsor] must attend the Board meeting when the project is considered for authorization.

(iii) If the project is authorized by the Board, a letter outlining the engineering and legal requirements for the project and other conditions of the financial assistance will be sent to the applicant[sponsor]. For example, some of the more common conditions of these projects are:

(A) Obtain all easements, rights-of-way, and permits required to construct, operate, and maintain the project.

(B) Pass a company resolution to assign properties, easements, and water rights required for the project to the Board.

(C) Enter into a contract with the Board for construction of the project and subsequent purchase from the Board.

(D) Obtain approval of final plans and specifications from the Division.

(E) Prepare a Water [Management and] Conservation Plan.

(F) Adopt an ordinance prohibiting [municipal] irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.

(G) Adopt a progressive water rate schedule (municipal projects).

(H) Submit a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described [in and within the time frame required] by Utah Code 73-10-33[(2010 First Substitute House Bill 60)], and

(I) Be in compliance with Utah Code 17-27a-211, [(2010 House Bill 298)] which requires a canal company or canal operator to provide stated information to the county.

(iv) The Board's authorization is valid for two years.

(A) If the project does not proceed to committal of funds within this time, the applicant may request to the Board to extend the authorization one additional year.

(B) The Board may grant an extension if the applicant has shown due diligence in completing its requirements.

(C) If the Board authorizes a phased project that will extend beyond two years, the Board's authorization will be valid for up to six years. A phased project will only be considered if the applicant needs to spread out the capital investments required over several years, or the nature and cost of each phase is unlikely to change significantly over the six-year period.

(c) COMMITAL OF FUNDS:

(i) After the applicant[sponsor] has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct staff[its officers] to enter into the necessary agreements with the applicant to secure project financing.

(ii) The project applicant[sponsor] will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the applicant will[sponsor may] be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

(1) After the application for assistance has been completed and signed by the Board member, [the application will be submitted to the Division for review.] The]Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the applicant[sponsor] by the State Engineer.

(2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

(3) Grants will be considered when money is appropriated by the Utah State Legislature (legislature) and will be restricted by limitations placed on the funding by the legislature and Board.

(4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, degree of hazard assigned to the project dam, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements (RCF, CWLF, CDF[C and D]).

(1) Project Cost Sharing:

(a) The Board desires to optimize available funding through the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.

(b) The applicants[sponsor's] financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the applicant[sponsoring organization]. A minimum cost share of 15% will be required.

(c) If additional funds become available to the applicant[sponsor] after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

(2) Alternate Financing:

(a) The Board may[will] consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest rate buydown, instead of directly funding construction of project features.

(b) When a project is approved for bond insurance only, the Board may provide the financial assistance as a grant.

(c) When a project is approved for both a loan and bond insurance, the bond insurance portion will be added to the loan amount.

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(3) Repayment of Financial Assistance:

(a) The repayment period will be at least 15 years (unless the applicant requests a shorter period) and generally be less than 25 years.

(b) The affordability guideline[minimum annual cost of water] for municipal projects will be 1.40[17] % of the region or project area's annual median adjusted gross income (MAGI). [The percentage will increase with income.] If the average cost of water per resident in the area (including average culinary water bill, average secondary water bill, or any property tax paid for water) is below this guideline, the repayment amount will be set to bring this cost up to the guideline. If the average cost (including the proposed repayment amount per resident) exceeds the guideline, adjustments to interest rate and repayment terms will be made accordingly.

(c) As a guideline, the interest rate for agricultural projects funded from the CDF will be 1.0%

(d) The starting interest rate for municipal projects funded through CWLF of the CDF will be 75% of the Revenue Bond Index (RBI). This rate will be updated quarterly on the first day of January, April, July, and October.

(i) The interest rate to be used for a particular project will be the rate in place at the time that feasibility report is completed.

(ii) The interest rate authorized by the Board for a project will be valid through committal of funds, as long as this committal takes place within 18 months of authorization. If not, staff will reevaluate the repayment terms using the updated interest rate. The Board also reserves the right to withdraw funds or reconsider the authorization with different terms.

(e) The board will apply further interest rate reductions for municipal projects as follows:

(i) Communities with a MAGI less than 80% of the current state MAGI will receive an interest rate reduction of 0.5 percentage points.

(ii) Communities with a MAGI less than 60% of the current state MAGI will receive an interest rate reduction of 1.0 percentage points.

(iii) In either case above, the interest rate will not be less than 1.0% from the CDF and 0% from the CWLF.

(f) As a guideline, the interest rate for industrial projects will be 7.0%.

([e]g) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the applicant[sponsor] one year's use of the project before the first payment is due.

(4) Security Arrangements:

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the RCF must be secured by a purchase agreement.

(ii) Projects financed through the CWLF or the CDF[C and D Fund] will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the applicant's[sponsor's] attorney must be submitted stating the applicant[sponsor] has complied with its articles and bylaws, state law, and the Board's contractual requirements.

(iii) Title to the project shall be returned to the applicant[sponsor] upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(B) Give written notice describing the proposed project to all water users in the applicant's[sponsor's] service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the applicant[sponsor] shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the applicant[sponsor] to hold a bond election before funds will be made available.

(5) Secondary Water Metering Program:

(a) The Board will allocate up to \$10 million in loans annually at an interest rate of 1.0% to entities to fund the installation of secondary meters.

(b) Only entities that manage pressurized secondary systems, which provide service to commercial, industrial, institutional, or residential users will be eligible for funding.

(c) Funds will be made available for the meter itself, installation and equipment costs, meter-reading technology, and the cost of databases and billing or reporting software. It will not include costs tied to ongoing reading of the meters, additional staffing, etc.

(d) Funds will be allocated only for the installation of new secondary water meters, not the repair and replacement of such meters.

(e) The repayment term will be five years less than the warranty of the meters, not to exceed 30 years.

(f) In circumstances where secondary water metering is only a component of an overall project, only that component will qualify for the 1.0% interest rate.

(g) The applicant will be required to mandate that all new developments within their service area install secondary water meters.

(h) The applicant will be required to either provide an educational component on the billing statement and/or charge based on usage with a tiered conservation rate.

(i) The applicant will be required to report water usage data gathered through the new metered secondary water systems annually to the Utah Division of Water Rights.

R653-2-7. Project Engineering and Construction for projects funded through the RCF, CWLF, and CDF[C and D Funds].

(1) Engineering:

(a) To expedite projects and facilitate the coordination of project development, applicants[sponsors] are encouraged to select a design engineer prior to making an application to the Board.

(2) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is

found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of an applicant's [sponsor's] bonding documents will be billed directly to the applicant[sponsor] by the legal firm doing the review for the Board.

(3) Design Standards and Approval:

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies that have regulatory or funding involvement in the project.

(4) Project Bidding and Construction:

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow an applicant [sponsor] to act as its own contractor on small projects. However, in all cases the applicant[sponsor] must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the Utah Registered Professional Engineer having responsible charge of project construction.

R653-2-8. Description of Water Infrastructure Restricted Account (WIRA).

(1) The Board administers the Water Infrastructure Restricted Account (WIRA) for development of the state's undeveloped share of the Colorado and Bear rivers, pursuant to existing interstate compacts governing both rivers as described in Title 73, Chapter 28, Lake Powell Pipeline Development Act and Chapter 26, Bear River Development Act.

(a) The Board will determine the need for funding investigation and construction aspects of developing the Colorado and Bear rivers.

(b) The Board will authorize expenditures from the WIRA.

(c) Any money utilized to construct water infrastructure to develop the state's share of the Colorado and Bear rivers is subject to the repayment provisions of the Lake Powell Pipeline Development Act and the Bear River Development Act.

(i) Beneficiaries of projects to develop the Colorado and Bear rivers as described in the Lake Powell Pipeline Development Act and Bear River Development Act will be required to provide at least 10% of the project cost.

(ii) Funding for the Lake Powell Pipeline and Bear River Development will be secured by a water sales agreement as described in the Lake Powell Pipeline Development Act and the Bear River Development Act.

(2) The Board administers the WIRA for the repair, replacement, or improvement of federal water infrastructure projects developed for local entities[sponsors] in the State of Utah when federal funds are not available. These entities[Local sponsors] may apply for this funding whether the project is owned or operated by the U.S. government or the local entity[sponsor].

(a) Any money utilized for the repair, replacement, or improvement of federal water infrastructure projects when federal funds are not available shall be repaid pursuant to the terms and conditions established by the Board and Division by rule, as specified under Section 73-10g-105, Utah Code Annotated.

(b) Applicants shall apply for WIRA funds for federal water infrastructure projects through the same procedure as stated in R653-2-3, Application Procedure.

(c) Federal water infrastructure projects will be funded through the same process as stated in R653-2-4, Project Funding Process.

(d) Federal water infrastructure projects or phases of such projects will be prioritized based the same criteria as stated in R653-2-2.1(a).

(e) Projects financed through WIRA for the replacement and improvement of federal water infrastructure projects will be secured by the sale of a bond by the local applicant[sponsor] to the Board.

R653-2-9. Financial Arrangements (WIRA).

(1) For State projects to develop the Colorado and Bear rivers, the Board and contracting entity shall, by contractual agreement, establish when water developed by the project will be delivered, the quantity of water delivered, the cost sharing between the Board and the applicant[sponsor], and the terms for repaying the Board's share of the project cost including the purchase term, interest rate, and cost per acre-foot of water purchased.

(2) For Federal water infrastructure projects, the applicant's[sponsor's] financial ability to cost share will be determined in the project investigation. On the basis of the investigation the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. If additional funds become available to the applicant[sponsor] for the project after the Board has authorized it, and if project costs do not increase, the additional funds will be used to reduce funding from the WIRA.

(3) Alternate Financing:

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(4) Repayment of Financial Assistance:

(a) The repayment period will be determined in the project investigation.

(b) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the applicant[sponsor] one year's use of the project before the first principal payment is due.

(5) Security Arrangements:

(a) WIRA funding will be secured by a bond issue.

(b) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(c) If the applicant[sponsor] desires to issue a non-voted revenue bond, the applicant[sponsor] will be required to:

(i) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(ii) Give written notice describing the proposed project to all water users in the applicant's[sponsor's] service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the applicant[sponsor] shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the applicant[sponsor] to hold a bond election before funds will be made available.

(6) Priority Master List:

(a) The owners/operators of eligible federal water infrastructure projects will submit a list of anticipated repairs, replacements, or improvements of their federal water infrastructure projects, including the expected construction dates, project costs, and

NOTICES OF PROPOSED RULES

WIRA fund requests. These lists will be incorporated into a master list of potential projects, which will be prioritized according to R653-2-8, Subsection 2(d) and subject to the availability of funds.

(b) A master list of potential projects will be prioritized by the Division of Water Resources by July 1, 2017 and every two years thereafter, and will be maintained for all potential applicants[sponsors].

(c) Funding of projects will be prioritized by the Board.

R653-2-10. Project Engineering and Construction for projects funded through the Water Infrastructure Restricted Account (WIRA).

(1) For State projects to develop the Colorado and Bear rivers:

(a) Once a project has moved from planning stage to development stage:

(i) Costs incurred by the Division for engineering, environmental and cultural resource studies, permitting, design and construction engineering, and construction inspection will be paid to the Board according to the terms set by Title 73, Chapter 26 and Chapter 28.

(ii) Costs for Division staff time during project planning will not become a charge to the applicant[sponsor].

(b) Design Standards and Approval for State projects:

(i) State projects for the development of the Colorado and Bear rivers, shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state, neighboring state, and federal agencies which have regulatory or funding involvement in the project. Additionally, all required records of decision, permits, authorizations, and agreements must be obtained from these agencies.

(2) For Federal water infrastructure projects:

(a) Costs incurred by the Division for planning and development will be paid to the Board pursuant to the terms and conditions established by the Board and Division under Section 73-10g-105.

(b) Design Standards and Approval for Federal projects:

(i) All Federal water infrastructure projects shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids for any phase of a project, plans and specifications for that phase must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project. Additionally, all required local, state, and federal licenses and permits for that phase of the project must be obtained before construction of that phase begins.

(iii) All required local, state, and federal licenses and permits for a phase of a project must be obtained before construction of that phase begins.

(3) Project Bidding and Construction:

(a) The Board will require that all project construction be awarded to qualified contractors based on competitive bids. Alternative project delivery methods may be considered instead of traditional 'design-bid-build' methods; however, these must be done in compliance with industry-approved standards and must be first approved by the Board.

(b) The design engineer or project manager shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the project manager who shall be a Registered Professional Engineer licensed in Utah, and any other applicable state.

(4) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation and administration will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the applicant[sponsor] if the project is found infeasible, denied by the Board, or if the applicant[sponsor] withdraws the application.

(c) Legal fees incurred in the review of an applicant's [sponsor's] bonding documents will be billed directly to the applicant[sponsor] by the legal firm doing the review for the Board.

R653-2-11. Qualifications to Guidelines.

(1) The foregoing guideline statements are meant as a guide for the Board, staff, and applicant[sponsor] to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding

Date of Enactment or Last Substantive Amendment: November 23, 2015|2020

Notice of Continuation: September 15, 2017

Authorizing, and Implemented or Interpreted Law: 73-10

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code	R916-5	Filing No.
Ref (R no.):		52484

Agency Information

1. Department:	Transportation	
Agency:	Operations, Construction	
Room no.:	Administration Suite, First Floor	
Building:	Calvin Rampton Building,	
Street address:	4501 South 2700 West	
City, state:	Salt Lake City UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	

Contact person(s):

Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@utah.gov

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

General Information**2. Rule or section catchline:**

Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

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

(If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The purpose of this rule is to implement the requirements of Section 72-6-107.5 and establish the procedures a contractor, subcontractor, consultant, or subconsultant must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This rule also establishes penalties for intentional violations of Section 72-6-107.5.

4. Summary of the new rule or change:

This rule implements the requirements and procedures a contractor, subcontractor, consultant, or subconsultant engaged by the Department of Transportation (Department) must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This rule also establishes penalties for intentional violations of Section 72-6-107.5.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

The Department does not anticipate this rule will have a fiscal impact on the state's budget. This rule does not require anything of the Department different from, or in addition to, the requirements set forth in Section 72-6-107.5, which the Department follows dutifully.

B) Local governments:

This rule will not have a fiscal impact on local governments because it establishes procedural requirements mandated by Section 72-6-107.5. The statutory requirements will cause any resulting fiscal impacts to local governments.

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

This rule will not have a fiscal impact on small businesses because it establishes procedural requirements mandated by Section 72-6-107.5. The statutory requirements will cause any resulting fiscal impacts to small businesses.

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

This rule will not have a fiscal impact on non-small businesses because it establishes procedural requirements mandated by Section 72-6-107.5. The

statutory requirements will cause any resulting fiscal impacts to non-small businesses.

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

This rule will not have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it establishes procedural requirements mandated by Section 72-6-107.5. The statutory requirements will cause any resulting fiscal impacts.

F) Compliance costs for affected persons:

There are no compliance costs for persons affected by this rule. Compliance costs are caused by requirements of the statute.

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

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Transportation, Carlos M. Braceras, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This rule will not have a fiscal impact on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Carlos M. Braceras, Executive Director			

Citation Information

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

Section	72-6-	
	107.5	

Public Notice Information

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

A) Comments will be accepted until:	03/02/2020
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10. This rule change MAY become effective on:

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

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	01/10/2020
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R916. Transportation, Operations, Construction.

R916-5. Health Reform -- Health Insurance Coverage in State Contracts – Implementation.

R916-5-1. Purpose.

The purpose of this rule is to comply with Section 72-6-107.5.

R916-5-2. Authority.

This rule is authorized pursuant to Subsection 72-6-107.5(6), which requires the Utah Department of Transportation to adopt administrative rules that establish the requirements and procedures contractors and subcontractors must follow to comply with Section 72-6-107.5.

R916-5-3. Definitions.

- (1) Except as otherwise stated, terms used in this rule are defined in Subsection 72-6-107.5(1).
- (2) In addition to the definitions stated in R916-5-3(1) the following definitions apply:
 - (a) "Contractor" means a person that is awarded a contract with the department.
 - (b) "Consultant" means a contractor that is an expert or trained professional that performs professional services as may be necessary to the planning, progress, and completion of any design, engineering, and engineering-related service for the department.
 - (c) "Executive Director" means the Executive Director of the Department of Transportation, including, unless otherwise stated, the executive director's designee.
 - (d) "Department" means the Department of Transportation established pursuant to Section 72-1-201.
 - (e) "Employee" is as defined in Subsection 34A-2-104(1)(b) who lives or works in the State together with his or her dependents.
 - (f) "Project" means the design, construction, or maintenance of a road or associated facility on right of way owned by the state.
 - (g) "Subcontractor" means a person or entity under contract with a contractor or another subcontractor.
 - (i) A "subconsultant" is a subcontractor that contracts with a consultant.
 - (ii) Subcontractor does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

R916-5-4. Application.

- (1) Except as provided in Subsection (2) this rule applies to contracts entered into by the department on or after July 1, 2009,
 - (a) with a contractor if its contract is for \$2,000,000.00 or greater on the execution date, and
 - (b) to a contract between a contractor and a subcontractor if the subcontract is for \$1,000,000.00 or greater on the execution date.
- (2) This rule does not apply if:
 - (a) application of this rule jeopardizes the receipt of federal funds,
 - (b) the contract is awarded without engaging in a standard procurement process pursuant to Section 63G-6a-802 (sole source),
 - (c) the contract is an emergency procurement awarded pursuant to Section 63G-6a-803, or
 - (d) the rule conflicts with federal law.
- (3) This rule only applies when Subsection R915-5-4(1) applies.
- (4) A person who intentionally uses a change order or contract modification to circumvent the requirements of subsection R916-5-4(1) is guilty of an infraction.

R916-5-5. Not Basis for Protest, Suspension, Disruption, or Termination.

(1) Failure of a contractor or subcontractor to comply with Section 72-6-107.5:

(a) may not be the basis for a protest or other action pursuant to Title 63G, Chapter 6a, Part 16; and

(b) may not be a basis for action or suit that would suspend, disrupt, or terminate the design or construction of a project.

(2) A contractor who is unable to demonstrate compliance with Section 72-6-107.5 when submitting the executed contract, signed by the successful bidder, may be declared non-responsive and the department may award the contract to the next lowest responsive and responsible bidder.

(3) A consultant to which the department awards a contract pursuant to Section 63G-6a-507 that is unable to demonstrate compliance Section 72-6-107.5 within 14 calendar days after being ranked first during a consultant selection process may be declared non-responsive. The department may then enter negotiations with the new first-ranked responsive consultant.

R916-5-6. Requirements and Procedures a Contractor Must Follow.

(1) A contractor or subcontractor must comply with the following requirements and procedures and demonstrate to the department, no later than the date the contract is executed, full compliance with Section 72-6-107.5:

(a) By providing a written certification to the Executive Director that the contractor and each subcontractor have and will maintain for the duration of the contract an offer of qualified health insurance coverage for each employee; and

(b) a contractor must also provide such written certification from each subcontractor at any tier that is subject to the requirements of this rule prior to the date the contract is executed.

(c) The contractor must:

(i) Include a requirement in the subcontract and certify to the department that a subcontractor must obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the subcontract; and

(ii) certify to the department that each subcontractor has and will maintain an offer of qualified health insurance coverage for each employee including dependents during the duration of the contract.

(2) Recertification. The executive director or designee may require a contractor to recertify by submitting a written request to the contractor that must within ten business-days of receiving the written request; however, the contractor will not be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination.

(a) When a contractor becomes subject to the requirements of Section 72-6-107.5, the contractor must obtain and submit to the executive director a written Statement of Compliance in the form published on the department's website.

(b) When a subcontractor becomes subject to the requirements of Section 72-6-107.5, the contractor must obtain from the subcontractor a written Statement of Compliance in the form published on the division's website.

(c) The commercially equivalent benchmark for the qualified health insurance coverage required pursuant to Section 72-6-107.5 that is provided by the Department of Health in accordance with Utah Code Subsection 26-40-115(2) is available on the department's website at: <https://chip.health.utah.gov/wp-content/uploads/2017/07/2019-Benchmark.pdf>.

(4) The required offer of health insurance must be available to the employee on the first day of the calendar month following the initial 90 days from the date of hire.

(5) Consultant Compliance Process.

(a) Consultants that must comply with Section 72-6-107.5 must demonstrate compliance in their initial Financial Screening Application.

(b) During the procurement process and no later than the execution of the contract, the consultant will confirm it and its subconsultants comply with this rule.

(c) The contract must include a provision requiring the consultant and its subconsultants to maintain and confirm compliance with this rule.

R916-5-7. Compliance subject to Audit.

The contractor or subcontractor's compliance is subject to audit by the department or the Office of the Legislative Auditor General.

R916-5-8. Penalties.

The penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of Section 72-6-107.5 may include:

(1) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation.

(2) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation.

(3) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation, and

(4) monetary penalties that may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract.

R916-5-9. Does Not Create a Contractual Relationship With a Subcontractor or Subconsultant.

Nothing in this rule may be construed to create any contractual relationship whatsoever between the department or the state with any subcontractor or subconsultant at any tier.

KEY: contracts, health insurance, health insurance in state contracts, health reform

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 72-6-107.5

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.

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

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code	R25-7	Filing No. 52476
Ref (R no.):		
Agency Information		
1. Department:	Administrative Services	
Agency:	Finance	
Room no.:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129-2128	
Mailing address:	PO Box 141031	
City, state, zip:	Salt Lake City, UT 84114-1031	
Contact person(s):		
Name:	Phone:	Email:
Cory Weeks	801-957-7713	cweeks@utah.gov

General Information
2. Rule or section catchline:
Travel-Related Reimbursements for State Employees
3. Effective Date:
01/07/2020
4. Purpose of the new rule or reason for the change:
This amendment is necessary because the IRS announced a rate decrease in rate for private vehicle use from 58 cents per mile to 57 cents per mile. The Division of Finance (Division) has determined that the reimbursement rate for private vehicles should decrease to 57 cents per mile to avoid exceeding federal mileage reimbursements.
5. Summary of the new rule or change:
This rule decreases reimbursement rate for mileage on private vehicles. (EDITOR'S NOTE: A corresponding proposed amendment to Rule R25-7 is under Filing No. 52480 in this issue, February 1, 2020, of the Bulletin.)

6. Regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

Specific reason and justification:

This rule was amended to match the IRS rate decrease for private vehicle use from 58 cents per mile to 57 cents per mile to avoid exceeding the federal mileage reimbursement. An emergency rule is needed because the new rates began on January 1, 2020, and state employees will be reimbursed at the lower rate starting January 1, 2020.

Fiscal Information**7. Aggregate anticipated cost or savings to:****A) State budget:**

There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel state employees will do.

B) Local governments:

Local governments have to comply with this rule, so there will potentially be a decrease in cost to local governments. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel local governments will do.

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

Because the change deals only with reimbursement rates for mileage for state employees, small businesses are not affected.

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*):

Individuals eligible for reimbursement will see a slight decrease in their mileage reimbursement amounts for travel in private vehicles.

8. Compliance costs for affected persons:

Because the amendment only changes mileage reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are not compliance costs.

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

I have reviewed these changes with the Division of Finance Director and believe these changes are warranted. Individuals may see a slight decrease in reimbursement amounts. However, the Division cannot determine exactly what the decrease will be as that depends on the amount of travel by individuals eligible for mileage reimbursement. This rule will have no impact on businesses.

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

Tani Pack Downing, 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 63G-3-601(3)	Section 63A-3-107	Section 63A-3-106
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Agency Authorization Information

Agency head or designee, Division Director and title:	John Reidhead	Date: 01/07/2020
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R25. Administrative Services, Finance.**R25-7. Travel-Related Reimbursements for State Employees.****R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

- (1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
- (2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

- (8) "Rate" means an amount of money.
- (9) "Reimbursement" means money paid to compensate an employee for money spent.
- (10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

- (1) Reimbursements are intended to cover all normal areas of expense.
- (2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.
- (3) Alcoholic Beverages are not reimbursable.

R25-7-5. Approvals.

- (1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization", in the State's ESS Travel system or another system with equivalent controls and calculations.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, in the State's ESS Travel system, another system with equivalent controls and calculations or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

- (1) State employees who travel on state business may be eligible for a meal reimbursement.
- (2) The reimbursement will include tax, tips, and other expenses associated with the meal.
- (3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is \$45.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$11.00
Lunch	\$14.00
Dinner	\$20.00
Total	\$45.00

(b) The daily travel meal allowance for out-of-state travel is \$50.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$13.00
Lunch	\$14.00
Dinner	\$23.00
Total	\$50.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$71 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$61 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$18, leaving a premium allowance for lunch and dinner of actual up to \$53.

(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$52.

(iii) If dinner is provided deduct \$34, leaving a premium allowance for breakfast and lunch of actual up to \$37.

Tier II Location

(i) If breakfast is provided deduct \$16, leaving a premium allowance for lunch and dinner of actual up to \$45.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$44.

(iii) If dinner is provided deduct \$28, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate for the location as of the date of travel.

(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

NOTICES OF 120-DAY (EMERGENCY) RULES

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
\$45.00	\$34.00	\$20.00	\$0
Out-of-State			
\$50.00	\$37.00	\$23.00	\$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
\$0	\$11.00	\$25.00	\$45.00
Out-of-State			
\$0	\$13.00	\$27.00	\$50.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's farthest destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at or after 6:00 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$95.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$80.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$90.00 plus tax and mandatory fees
Ephraim	\$80.00 plus tax and mandatory fees
Farmington	\$90.00 plus tax and mandatory fees
Fillmore	\$80.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Hanksville	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$90.00 plus tax and mandatory fees
Layton	\$90.00 plus tax and mandatory fees

NOTICES OF 120-DAY (EMERGENCY) RULES

Logan	\$85.00 plus tax and mandatory fees
Mexican Hat	\$90.00 plus tax and mandatory fees
Moab/Green River	\$110.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$90.00 plus tax and mandatory fees
Panguitch	\$75.00 plus tax and mandatory fees
Park City/Midway	\$110 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane/La Verkin	\$85.00 plus tax and mandatory fees
Torrey	\$90.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgment to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors for State Government travel.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5, in the State's ESS Travel system or another system with equivalent controls and calculations.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B, FI 51D, or ESS Travel.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

NOTICES OF 120-DAY (EMERGENCY) RULES

R25-7-9. Reimbursement for Incidental.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

(a) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(d) Gratuities/Tips for ground transportation (taxi/shuttle/rideshare) will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities/Tips must be shown on an original receipt.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel for amounts of \$20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or [§8]57 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [§8]57 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(g) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(h) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(i) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A, FI 51B, or ESS Travel, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at [58]57 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

Date of Enactment or Last Substantive Amendment: [July 1, 2019]January 7, 2020

Notice of Continuation: February 8, 2018

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

NOTICE OF EMERGENCY (120-DAY) RULE

Utah Admin. Code	R25-21	Filing No. 52515
Ref (R no.):		

Agency Information

1. Department:	Administrative Services	
Agency:	Finance	
Building:	Taylorsville State Office Building	
Street address:	4315 South 2700 West Floor, Third Floor	
City, state, zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141031	
City, state, zip:	Salt Lake City, UT 84114-1031	

Contact person(s):

Name:	Phone:	Email:
John Reidhead	801-957-7734	jreidhead@utah.gov

NOTICES OF 120-DAY (EMERGENCY) RULES

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

General Information

2. Rule or section catchline:

Medical Cannabis Payment Provider Standard

3. Effective Date:

01/27/2020

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

This rule is enacted under the authority of Subsection 26-61a-603(2)(a), which authorizes the Department of Administrative Services, and the Division of Finance, to set standards that payment providers must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses.

5. Summary of the new rule or change:

This rule establishes the functional, technical and other standards payment providers must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses. (EDITOR'S NOTE: A corresponding proposed new Rule R25-21 is under Filing No. 52503 in this issue, February 1, 2020, of the Bulletin.)

6. Regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

Specific reason and justification:

Subsection 26-61a-103(2) requires certain agencies to have an electronic verification system in place by March 1, 2020. Subsection 26-61a-201(1) requires the Department of Health by March 1, 2020, to begin issuing patient cards within 15 days of patient application. Subsection 26-61a-301(9) requires the Department of Health to begin accepting applications from medical cannabis pharmacies by March 1, 2020. All three of these March 1, 2020, deadlines indirectly require the Division of Finance to implement this rule for electronic payment providers on or before March 1, 2020. Representatives of the Department of Health have confirmed with the Division of Finance that at least one pharmacy plans to begin operations as soon as possible after March 1, 2020, and the pharmacy plans to use an electronic payment provider. In order for authorized pharmacies to begin to sell medical cannabis products, the pharmacy needs to select and contract with an electronic payment provider approved under this rule. Without implementing this emergency rule now, medical cannabis providers will be delayed and not able to begin sales until after March 1, 2020.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs to the state budget.

B) Local governments:

There are not anticipated costs to local governments.

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

The relevant data is unavailable because affected businesses will be able to choose among authorized payment providers and costs are unknown and may vary. Costs are not estimable. Products affected by this rule are optional for businesses affected. Marijuana-related businesses choosing a payment provider would have similar costs with or without this rule.

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 applies only to participating payment providers for Utah cannabis-related businesses. There are not anticipated direct costs or savings to other persons. Costs incurred by Utah cannabis-related businesses will likely be passed on to their customers (indirect costs). However, the costs are not estimable because the relevant data necessary to determine how the costs will be allocated to customers is not available. The Division of Finance also expect customers would have similar costs passed on them with or without this rule.

8. Compliance costs for affected persons:

The costs to payment providers cannot reasonably be estimated because the relevant data necessary to determine how the costs will be allocated to customers is not available. The cost to the payment providers would depend on the type of establishment and service each provider offers.

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

I have reviewed the regulatory impact table, and agree there are no estimable fiscal impacts associated with this rule due to the lack of relevant data. Tani Pack Downing.

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

Tani Pack Downing, 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-603(2)(a)

Agency Authorization Information

Agency head or designee, and title:	John Reidhead, Division Director	Date:	01/22/2020
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R25. Administrative Services, Finance.**R25-21. Medical Cannabis Payment Provider Standards.****R25-21-1. Purpose and Authority.**

(1) Purpose. This rule establishes the functional, technical and other standards a payment provider must meet in order to be approved to conduct financial transactions for Utah cannabis-related businesses.

(2) Authority. This rule is enacted under the authority of Section 26-61a-603(2)(a).

R25-21-2. Definitions.

Terms used in this rule are defined in Section 26-61a-102.

In addition:

(1) "Utah MRB" means any cannabis production establishment, medical cannabis pharmacy, or home delivery medical cannabis pharmacy licensed within the State of Utah in accordance with the Utah Medical Cannabis Act.

(2) "Bank" means any federal or state chartered and regulated depository financial institution.

(3) "Bank of First Deposit" means the first Bank that receives funds from Utah MRB related transactions.

R25-21-3. Payment Provider Standards.

(1) Prerequisite to consideration of a Payment Provider under this rule, a Utah MRB must provide the Division of Finance and State Treasurer documentation associated with the Payment Provider in accordance with Subsection 26-61a-603(1).

(2) A Payment Provider must provide certification signed by an officer of the Bank of First Deposit acknowledging that the Payment Provider is facilitating cannabis-related transactions legal under Utah law on behalf of a Utah MRB.

(3) A Payment Provider must provide certification from the Bank of First Deposit that data transmitted to the bank is adequate and transparent for the following regulatory requirements:

(a) Certification as to Know Your Customer (KYC) compliance pursuant to the Federal USA Patriot Act;

(b) Certification as to compliance with Suspicious Activity Report (SAR) and Currency Transaction Report (CTR) filings pursuant to the Federal Bank Secrecy Act; and

(c) Certification as to due diligence pursuant to the Federal Department of Treasury, Financial Crimes Enforcement Network (FinCEN) guidance given in FIN-2014-G001, "BSA Expectations Regarding Marijuana-Related Businesses," Issued February 14, 2014.

(4) A Payment Provider must provide certification and supporting documentation that Automated Clearing House (ACH) transactions are compliant with National Automated Clearing House Association (NACHA) Rules and Operating Guidelines.

(5) The Payment Card Industry Data Security Standards (PCI-DSS) comprise the security framework the Division of Finance will use to evaluate information security of payment provider solutions. A Payment Provider must provide PCI-DSS assessments, as applicable, including:

(a) PA-DSS certification for devices with a signature from a Payment Application Qualified Security Assessor (PA-QSA); and

(b) PCI-DSS Report on Compliance with a signature from a Qualified Security Assessor (QSA).

(6) A Payment Provider facilitating cash transfers to a Utah MRB's Bank must:

(a) Certify that the Payment Provider supplies detailed records of cash transfers to Utah MRBs and their respective Banks;

(b) Provide written policies and procedures that demonstrate that the Payment Provider adequately protects the safety of Utah MRB employees and the Payment Provider's drivers; and

(c) Certify that the Payment Provider supplies data sufficient for Suspicious Activity Report (SAR) for cash transfers to Bank of First Deposit.

R25-21-4. Approved Payment Providers.

(1) A Payment Provider must submit evidence of compliance with Section R25-21-3 to the Department of Administrative Services, Division of Finance for consideration for approval and on an annual basis thereafter.

(2) A Payment Provider must notify the Division of Finance within 30 days of any changes in information reported for compliance to this rule. If required, time to cure non-compliance will be assigned by the Division of Finance upon notification.

(3) Failure to comply with paragraph (2) will result in automatic removal from the approved Payment Provider list.

(4) A Payment Provider that is removed from the approved Payment Provider list may appeal to the Director of the Division of Finance for reinstatement subject to administrative Rule R25-2.

(5) A list of approved Payment Providers is available at finance.utah.gov/cannabispaymentproviders.

KEY: marijuana, medical cannabis, payment provider

Date of Enactment or Last Substantive Amendment: January 27, 2020

Authorizing, and Implemented or Interpreted Law: 26-61a-603(2)(a)

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	R162-2c	Filing No. 50321
Ref (R no.):		

Agency Information

1. Department:	Commerce	
Agency:	Real Estate	
Room no.:	Second Floor	
Building:	Heber M. Wells Bldg.	
Street address:	160 East 300 South	
City, state, zip:	Salt Lake City, Utah 84111-2316	
Mailing address:	PO Box 146711	
City, state, zip:	Salt Lake City, Utah 84114-6711	
Contact person(s):		
Name:	Phone:	Email:
Justin Barney	801-530-6603	justinbarney@utah.gov

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

General Information

2. Rule catchline:
Utah Residential Mortgage Practices and Licensing Rules
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Congress passed the SAFE Mortgage License Act (the SAFE Act), which became effective July 30, 2008. In response to the SAFE Act, Utah enacted the Utah Residential Mortgage Practices and Licensing Act (the Utah Mortgage Act), found in Title 61, Chapter 2c. Utah Code Section 61-2c-103 requires the Utah Division of Real Estate to make rules for the administration of the Utah Mortgage Act. On March 31, 2015, a five-year review and statement of continuation of the Utah Residential Mortgage Practices and Licensing Rules was made effective.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Utah Residential Mortgage Practices and Licensing Rules have been amended numerous times since March 31, 2015. However, no public comments were received either supporting or opposing the rule as amended.

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 SAFE Mortgage License Act and Utah Residential Mortgage Practices and Licensing Act remain in effect. They provide the basis for this rule and the expectation and need for its continued existence. Subsection 61-2c-103(3) requires that the Division of Real Estate make rules for the administration of the Utah Mortgage Act. This rule is required by statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee,	Jonathan Stewart, Director	Date:	01/02/2020
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FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

and title:			
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code R162-2e Ref (R no.):		Filing No. 50330	

Agency Information

1. Department:	Commerce		
Agency:	Real Estate		
Room no.:	Second Floor		
Building:	Heber M. Wells Bldg.		
Street address:	160 East 300 South		
City, state, zip:	Salt Lake City, Utah 84111-2316		
Mailing address:	PO Box 146711		
City, state, zip:	Salt Lake City, Utah 84114-6711		
Contact person(s):			
Name:	Phone:	Email:	
Justin Barney	801-530-6603	justinbarney@utah.gov	

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

General Information

2. Rule catchline:	Appraisal Management Company Administrative Rules
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	
<p>This rule was adopted under the statutory provisions of Title 61, Chapter 2e, primarily as a renumbering and reorganizing of the previously adopted rule. Section 61-2e-103, provides that the Real Estate Appraiser Licensing and Certification Board, with the concurrence of the Real estate Division (Division), may make rules that are consistent with Chapter 2e and necessary to implement Chapter 2e. Other sections also authorize the rulemaking process including Sections 102, 203, 304, 305, 401, and 402. Changes and updates to the rule have been made effective in response to questions from the industry. This rule helps to guide appraisal management companies (AMCs) to satisfy the statutory requirements of registration, record keeping, disclosures, bonds, and other statutory requirements. In addition, this rule ensures that AMCs use licensed or certified appraisers and outlines specific information required to be provided to an appraiser at the time an appraisal assignment is offered.</p>	
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:

A proposed rule amendment filed November 17, 2016. The proposal was to establish a means of determining the amount of the customary and reasonable fee required to be paid to an appraiser for completion of an appraisal assignment, requirements involving the timing of communications between an AMC and an appraiser, and the process of offering an appraisal assignment to an appraiser. In response to the proposed rule amendment, an industry association that represents many AMCs registered in Utah expressed concern about the proposed amendments and requested a public hearing.

A public hearing was held January 25, 2017. Prior to the public hearing, the Division received approximately 15 written comments with opinions both in favor of and opposed to the proposed rule amendment. A change in the proposed rule was filed April 7, 2017. However, a registered AMC and the industry association which represents numerous Utah AMCs remained concerned despite the changes to the proposed rule amendment. The Real Estate Appraiser Licensing and Certification Board determined to allow the proposed rule amendment, as changed, to lapse without becoming effective and reestablished a committee to continue to consider possible amendments to this rule.

Numerous committee meetings were held to address the concerns expressed by the public and industry members. The industry association provided input to the committee. Changes were made to the previous proposed amendment and a new proposed rule amendment was filed August 24, 2018. The new proposed rule amendment took into account the concerns and opinions expressed in written comments and at the public hearing. After being allowed input into the rule amendment process, the industry association that had opposed the previous attempt to amend the rule provided public comment in favor of this second attempt to amend the rule. This association represents numerous AMCs registered in Utah. Three public comments were received in opposition to this proposed rule amendment.

In response to a proposed rule amendment filed December 3, 2018, an industry association commented in favor of a proposed rule amendment an AMC registry fee to allow Utah registered AMCs to be included in the National AMC Registry.

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 statutory requirements found in Title 61, Chapter 2e, Appraisal Management Company Registration and Regulation Act (the Act) remain in effect or have been updated at the time of this five-year review. The rulemaking authority from Section 103 of the Act continues to authorize this rule. Therefore, this rule should be continued.

The Division considered the public comment received in opposition to this rule. In some cases, this rule was

amended to adopt the provisions advanced by those opposed to this rule. For other comments offered in opposition to this rule, the Division believes that this rule strikes a balance between competing interests between appraisers and Appraisal Management Companies. The Division feels that the present form of this rule is both consistent with the Act and necessary to its implementation.

Agency Authorization Information

Agency head or designee,	Jonathan Stewart, Director	Date:	01/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R162-57a	Filing No. 50329
Ref (R no.):		

Agency Information

1. Department:	Commerce		
Agency:	Real Estate		
Room no.:	Second Floor		
Building:	Heber M. Wells Bldg.		
Street address:	160 East 300 South		
City, state, zip:	Salt Lake City, Utah 84111-2316		
Mailing address:	PO Box 146711		
City, state, zip:	Salt Lake City, Utah 84114-6711		

Contact person(s):

Name:	Phone:	Email:
Justin Barney	801-530-6603	justinbarney@utah.gov

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

General Information

2. Rule catchline:

Timeshare and Camp Resort Rules

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was adopted under the statutory provisions of Title 57, Chapter 19, the Timeshare and Camp Resort Act. Section 57-19-3 provides that the Director of the Division of Real Estate may make, amend, and repeal rules when necessary to carry out the provisions of Chapter 19. Other sections in Chapter 19 which authorize the rulemaking process are Sections 5, 13, 15, 16, 18, 20, 23, and 26.

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 public comments were received in opposition to this rule amendments adopted since this rule was last reviewed in March 2015.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Title 57, Chapter 19, the Timeshare and Camp Resort Act (the Act) remains in effect. Section 57-19-3 grants authority to the Director of the Division of Real Estate to make rules when necessary to carry out the provisions of the Act. The Director has determined that this rule previously made pursuant to this authority should remain. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee,	Jonathan Stewart, Director	Date:	01/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R164-2	Filing No. 50326
Ref (R no.):		

Agency Information

1. Department:	Utah Department of Commerce		
Agency:	Securities		
Room no.:	Second Floor		
Building:	Heber Wells Building		
Street address:	160 East 300 South		
City, state, zip:	Salt Lake City, UT 84114-6760		
Mailing address:	160 East 300 South – 2 nd Floor		
City, state, zip:	Salt Lake City, UT 84114-6760		

Contact person(s):

Name:	Phone:	Email:
Charles Lyons	801-530-6940	clyons@utah.gov
Tom Brady	801-530-6610	tbrady@utah.gov

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

General Information

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

2. Rule catchline:
Investment Adviser – Unlawful Acts
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 61-1-2 describes acts of investment advisers which are deemed to be unlawful, and provides that the Division of Securities (Division) may, by rule, adopt exemptions from the section's requirements for investment advisory contracts. Section 61-1-24 allows the Division to make rules when necessary to carry out provisions of the chapter.
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 defines the circumstances under which an exception to the prohibition against performance-based fees contained in Section 61-1-2 is permissible. This rule protects the public by ensuring that specific requirements are met before an investment adviser may receive performance-based compensation for investment advisory services. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee,	Thomas Brady, Director	Date:	01/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R277-114	Filing No. 50384
Ref (R no.):		

Agency Information

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

538- 7830	h.gov
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
Corrective Action and Withdrawal or Reduction of Program Funds

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the 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; and Subsection 53E-3-401(8)(c), which allows the Board to make rules setting forth the procedures to be followed for enforcing Board 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:

There were no written comments received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule continues to be necessary because this rule provides procedures for public education program monitoring and corrective action for noncompliance with identified: program requirements; program accountability standards; and financial propriety. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee,	Angie Stallings, Deputy Superintendent of Policy	Date:	01/13/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R317-4	Filing No. 50779
Ref (R no.):		

Agency Information

1. Department:	Environmental Quality		
Agency:	Water Quality		

Room no.:	Third Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144870	
City, state, zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	Phone:	Email:
Robert Beers	801-536-4380	rbeers@utah.gov
John Mackey	801-536-4347	jkmackey@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

Onsite Wastewater Systems

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Title 19, Chapter 5. The statute authorizes protection of human health and the environment. This rule achieves that through regulation of the potential adverse effects from the disposal of onsite wastewater.

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:

Minor revision of this rule, involving all stakeholders, was concluded in 2015 to correct errors and to include additional technical information. No written comments have been received since the 2015 revision.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides vital minimum standards and guidance to local health departments for regulating the design, approval, construction, and maintenance of individual onsite wastewater treatment and disposal systems. This rule is essential for regulation of wastewater treatment and disposal for individual residences and businesses that do not have access to a public sewer system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, Director and title:	Erica B. Gaddis	Date:	01/13/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R386-800	Filing No. 50908
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Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Epidemiology	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, Utah 84114	
Mailing address:	PO Box 142102	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	Phone:	Email:
Rich Lakin	801-538-9450	rlakin@utah.gov
Jon Reid	801-538-9450	jreid@utah.gov

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

General Information

2. Rule catchline:

Immunization Coordination

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Immunization Coordination Rule is enacted under Section 26-6-7 (Communicable Disease Control Act) to detect, prevent and control communicable disease. This rule establishes an information system to collect, coordinate, and share immunization information among healthcare providers, health insurers, schools, daycare centers, and publicly funded organizations to assure adequate immunization, to avoid unnecessary immunization, to meet statutory immunization requirements, and to control disease outbreaks.

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 comments received during and since the last five-year review.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 supports ongoing operation and maintenance of the Utah Immunization Information system used by clinicians throughout the state for clinical decision support and by schools/daycares/camps throughout the state for compliance with entry requirements – in order to continue to increase Utah's immunization coverage, prevent vaccine-preventable diseases and improve the health of Utah's citizens. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	Date:	01/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R597-2	Filing No. 51475
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Agency Information

1. Department:	Judicial Performance Evaluation Commission	
Agency:	Administration	
Building:	East Senate Building	
Street address:	350 North State Street	
City, state, zip:	Salt Lake City, UT 84107	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Yim	801-538-1652	jyim@utah.gov

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

General Information

2. Rule catchline:
Administration of the Commission
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The commission is authorized to adopt procedures governing internal operations relating to judicial performance evaluation and meeting protocol, consistent with Sections 78A-12-201 through 78A-12-206.

4. A summary of written comments received during and since the last five-year review of this rule from

interested persons supporting or opposing this rule:

No written comments were received during and since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The statute requires that the Judicial Performance Evaluation Commission adopt procedures governing internal operations. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jennifer Yim, Executive Director	Date:	01/06/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R708-50	Filing No. 51903
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Agency Information

1. Department:	Public Safety	
Agency:	Driver License	
Room no.:	Third Floor	
Building:	Calvin Rampton Complex	
Street address:	4501 S 2700 W	
City, state, zip:	Taylorsville UT 84129	
Mailing address:	PO Box 144501	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-965-4018	kgibb@utah.gov
Tara Zamora	801-965-4451	tarazamora@utah.gov

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

General Information

2. Rule catchline:
Vehicle Impound Fee Reimbursement
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 Section 41-12a-806, which states that the Department of Public Safety (Department)

shall make rules establishing procedures for a person to apply for a reimbursement under Subsection 41-12a-806(4)(d).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department has not received any written comments regarding this rule during and since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 41-12a-806, and is necessary to outline the procedures for an individual whose vehicle was impounded for no insurance to request reimbursement of the impound fees if the vehicle was in fact insured at the time of the impoundment as authorized under Subsection 41-12a-806(4)(d). Therefore, this rule should be continued.

Agency Authorization Information

Agency head	Jess L. Anderson	Date:	01/15/2020
or designee, and title:	Commissioner		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R850-21	Filing No. 52028
Ref (R no.):		

Agency Information

1. Department:	School and Institutional Trust Lands		
Agency:	Administration		
Room no.:	Suite 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:	
Wes Adams	801-538-5171	wesadams@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:

Oil, Gas and Hydrocarbon Resources

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsections 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq. authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases and management of trust-owned lands and mineral resources.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received by the agency for this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The School and Institutional Trust Lands Administration manage over four million acres of subsurface mineral rights located throughout the state of Utah for the benefit of the public schools and other beneficiaries. Much of this acreage is currently under lease to third parties for mineral development which consistently provides revenues for the beneficiaries of the land. Rules governing the management and use of these mineral resources are critical to the continued success in managing the resources. This rule also provides a consistent set of procedures as to how business is conducted by the agency for customers to follow. Therefore, this rule should be continued.

Agency Authorization Information

Agency head	David Ure	Date:	01/03/2020
or designee, and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code	R918-7	Filing No. 52118
Ref (R no.):		

Agency Information

1. Department:	Transportation		
Agency:	Operations, Maintenance		
Room no.:	First Floor Administration Suite		
Building:	Calvin Rampton		
Street address:	4501 South 2700 West		
City, state, zip:	Salt Lake City, Utah 84129		

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, Utah 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule catchline:

Highway Sponsorship 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:

Section 72-6-403 authorizes the Department of Transportation (Department) to establish a sponsorship program to allow for private sponsorship of certain Department operational activities or other highway-related services or programs. Concomitant to establishing such a sponsorship program, Subsection 72-6-403(5) mandates the Department make and enforce rules governing the placement and size restrictions for acknowledgment signs at rest areas; and other size, placement, and content restrictions that the Department determines are necessary.

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:

On Jan 29, 2015, David E. Stein of TravelersMarketing wrote to request Rule R918-7 be modified to allow for sponsorship graphics on SSP vehicles and mainline rest area acknowledgement signs.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department maintains a sponsorship program to allow for private sponsorship of certain Department operational activities or other highway-related services or programs authorized by Section 72-6-403. Subsection 72-6-403(5) is still effective law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	01/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R982-700	Filing No. 52191
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Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 East 300 South	
City, state, zip:	Salt Lake City, Utah	
Mailing address:	PO Box 45244	
City, state, zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-517-4709	ampeck@gmail.com

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

General Information

2. Rule catchline:

Employment Opportunities Website

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Department of Workforce Services (Department) filed a repeal of this rule on December 16, 2019. Public comments will be accepted until January 31, 2020, and that rule change may become effective on February 7, 2020. The Department needed to file the five-year review to keep this rule in place in case the repeal is not made effective.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department filed a repeal of this rule on December 16, 2019. Public comments will be accepted until January 31, 2020 and the rule change may become effective on February 7, 2020. Therefore, this rule is continued for now.

Agency Authorization Information

Agency head or designee, and title:	Jon Pierpont, Executive Director	Date:	1/13/2020
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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).

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

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code	R433-1	Filing No. 51096

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Maternal and Child Health	
Street address:	3760 S. Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Contact person(s):		
Name:	Phone:	Email:
Heather Sarin	801-273-2856	hsarin@utah.gov
Laurie Baksh	801-273-2857	lbaksh@utah.gov

General Information

2. Rule catchline:

Very Low Birth Weight Infant Reporting

3. Reason for requesting the extension and the new deadline date:

The repeal process for Rule R433-1 is scheduled to take longer than anticipated. An extension will ensure that the correct paperwork has been filed and this rule stays in place until the repeal is effective. New deadline is 06/11/2020.

Agency Authorization Information

Agency head or designee, and title:	Lynne Nilson, Bureau Director	Date:	01/06/2020
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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** 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. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

EDITOR'S NOTE: There are two versions of effective notices in this Bulletin. The first is from our eRules 2 system. These are notices that were received between 01/01/2020 and 01/15/2020. The second is from our new eRules 3 system. These are notices that were made effective from 01/02/2020 to 02/01/2020.

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

eRules 2 effective notices:

Agriculture and Food
Regulatory Services
No. 44092 (NEW): R70-440. Egg Products Inspection
Published: 10/15/2019
Effective: 01/15/2020

Commerce

Administration
No. 44015 (AMD): R151-4-901. Availability of Agency Review and Reconsideration
Published: 09/15/2019
Effective: 01/08/2020

Education

Administration
No. 44136 (NEW): R277-306. Educator Preparation Programs for School Psychologists, Audiologists, Speech-Published: 11/01/2019
Effective: 01/14/2020

Health

Disease Control and Prevention, Immunization
No. 44105 (AMD): R396-100. Immunization Rule for Students
Published: 10/15/2019
Effective: 01/13/2020

Health Care Financing, Coverage and Reimbursement Policy
No. 44023 (NEW): R414-518. Emergency Services Program for Non-Citizens
Published: 09/15/2019

Human Services

Administration
No. 44151 (AMD): R495-879, Parental Support for Children in Care
Published: 11/15/2019
Effective: 01/15/2020

Insurance

Administration
No. 44180 (NEW): R590-282. Pharmacy Benefit Managers
Published: 11/15/2019
Effective: 01/14/2020

Natural Resources

Parks and Recreation
No. 44141 (AMD): R651-207. Registration Fee
Published: 11/15/2019
Effective: 01/15/2020

No. 44183 (AMD): R651-611. Fee Schedule
Published: 11/15/2019
Effective: 01/15/2020

No. 44186 (AMD): R651-633. Special Closures or Restrictions.
Published: 11/15/2019
Effective: 01/15/2020

No. 44182 (AMD): R651-634. Nonresident OHV User Permits and Fees
Published: 11/15/2019
Effective: 01/15/2020

NOTICES OF RULE EFFECTIVE DATES

Public Safety

Administration

No. 44171 (AMD): R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund
Published: 11/15/2019
Effective: 01/09/2020

Criminal Investigations and Technical Services

No. 44164 (AMD): R722-300. Concealed Firearm Permit and Instructor Rule
Published: 11/15/2019
Effective: 01/09/2020

No. 44163 (NEW): R722-400. Silver Alert Notification System

Published: 11/15/2019
Effective: 01/09/2020

Driver License

No. 44166 (AMD): R708-7. Functional Ability in Driving: Guidelines for Physicians
Published: 11/15/2019
Effective: 01/09/2020

No. 44167 (AMD): R708-8. Review Process: Driver License Medical Section
Published: 11/15/2019
Effective: 01/09/2020

Peace Officer Standards and Training

No. 44155 (AMD): R728-409. Suspension, Revocation, or Relinquishment of Certification
Published: 11/15/2019
Effective: 01/09/2020

Regents (Board of)

Administration

No. 44093 (NEW): R765-570. Higher Education Disclosures
Published: 10/15/2019
Effective: 01/15/2020

No. 44094 (NEW): R765-609C. Regents Scholarship
Published: 10/15/2019
Effective: 01/15/2020

eRules 3 effective notices:

Administrative Services

Finance

No. 52362 R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website
Published: 12/15/2019
Effective: 01/22/2020

No. 52315 R25-11. Utah Transparency Advisory Board, Procedures for Electronic Meetings
Published: 12/15/2019
Effective: 01/22/2020

Commerce

Occupational and Professional Licensing
No. 52309 R156-1. General Rules of the Division of Occupational and Professional Licensing
Published: 12/01/2019
Effective: 01/09/2020

No. 52325 R156-17b-309. Exemptions from Licensure - Opioid Treatment Program
Published: 12/01/2019
Effective: 01/09/2020

No. 52310 R156-55b. Electricians Licensing Act Rule
Published: 12/01/2019
Effective: 01/09/2020

No. 52311 R156-55c. Plumber Licensing Act Rule
Published: 12/01/2019
Effective: 01/09/2020

No. 52391 R156-60. Mental Health Professional Practice Act Rule
Published: 12/15/2019
Effective: 01/21/2020

No. 52388 R156-61. Psychologist Licensing Act Rule
Published: 12/15/2019
Effective: 01/21/2020

Education

Administration

No. 52356 R277-100. Definitions for Utah State Board of Education (Board) Rules
Published: 12/15/2019
Effective: 01/22/2020

No. 52360 R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program
Published: 12/15/2019
Effective: 01/22/2020

No. 52357 R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications
Published: 12/15/2019
Effective: 01/22/2020

No. 52341 R277-325. Public Education Exit and Engagement Surveys
Published: 12/01/2019
Effective: 01/09/2020

No. 52355 R277-400. School Facility Emergency and Safety
Published: 12/15/2019
Effective: 01/22/2020

No. 52342 R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information
Published: 12/01/2019
Effective: 01/09/2020

No. 52358 R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications
 Published: 12/15/2019
 Effective: 01/22/2020

No. 52359 R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions
 Published: 12/15/2019
 Effective: 01/22/2020

No. 52335 R277-615. Standards and Procedures for Student Searches
 Published: 12/01/2019
 Effective: 01/09/2020

No. 52334 R277-624. Electronic Cigarette Products in Schools
 Published: 12/01/2019
 Effective: 01/09/2020

No. 52344 R277-715. Out-of-School Time Program Standards
 Published: 12/01/2019
 Effective: 01/09/2020

Health
 Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health
 No. 52332 R388-804. Special Measures for the Control of Tuberculosis
 Published: 12/01/2019
 Effective: 02/01/2020

Family Health and Preparedness, Children with Special Health Care Needs
 No. 52376 R398-30. Children's Organ Transplants
 Published: 12/15/2019
 Effective: 01/27/2020

Health Care Financing, Coverage and Reimbursement Policy
 No. 52319 R414-506. Hospital Provider Assessments
 Published: 12/01/2019
 Effective: 01/09/2020

Family Health and Preparedness, Licensing
 No. 52404 R432-15. Speciality Hospital - Cancer Treatment Construction
 Published: 12/15/2019
 Effective: 01/24/2020

No. 52406 R432-107. Specialty Hospital - Cancer Treatment
 Published: 12/15/2019
 Effective: 01/24/2020

Human Services
 Child and Family Services
 No. 52368 R512-100. In-Home Services
 Published: 12/15/2019
 Effective: 01/22/2020

Insurance
 Administration
 No. 52384 R590-164. Uniform Health Billing
 Published: 12/15/2019
 Effective: 01/22/2020

No. 52385 R590-260. Utah Defined Contribution Risk Adjuster Plan of Operation
 Published: 12/15/2019
 Effective: 01/22/2020

No. 52386 R590-271. Data Reporting for Consumer Quality Comparison
 Published: 12/15/2019
 Effective: 01/22/2020

Public Service Commission
 Administration
 No. 52323 R746-314. Rules Governing the Community Renewable Energy Program
 Published: 12/01/2019
 Effective: 01/08/2020

No. 52338 R746-409. General Provisions
 Published: 12/01/2019
 Effective: 01/08/2020

Tax Commission
 Motor Vehicle
 No. 52327 R873-22m. Removable Windshield Placards
 Published: 12/01/2019
 Effective: 01/09/2020

Workforce Services
 Employment Development
 No. 52321 R986-700. Provider Eligibility Amendments
 Published: 12/01/2019
 Effective: 01/09/2020

End of the Notices of Rule Effective Dates Section