

UTAH STATE BULLETIN

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2021-13

Declaring a State of Emergency Due to Drought Conditions

WHEREAS, the state of Utah experienced a record dry and near record hot calendar year in 2020;

WHEREAS, the statewide snowpack reached approximately 81% of normal and peaked 10 days early;

WHEREAS, soil moisture reached exceptionally low levels not previously seen since soil moisture monitoring began in 2006;

WHEREAS, low soil moisture has already adversely affected the spring runoff;

WHEREAS, the state's reservoir storage has decreased 14% over the past year;

WHEREAS, all forecasts for spring runoff for the state are below 76% of the state seasonal average;

WHEREAS, the United States Department of Agriculture currently has listed 28 primary and one contiguous county in Utah under the Secretarial Disaster Designation for drought;

WHEREAS, these extreme drought conditions have adversely and significantly impacted agribusiness and livestock production, as well as wildlife and natural habitats;

WHEREAS, increased recreation in dry vegetative conditions has contributed to an increased and prolonged threat of wildfire across the state;

WHEREAS, drought conditions that require mitigation are expected to persist;

WHEREAS, these conditions create a state of emergency within the intent of the Disaster Response and Recovery Act found in Title 53, Chapter 2a of the Utah Code;

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

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

NOW, THEREFORE, I, Spencer J. Cox, Governor of the State of Utah, declare a state of emergency due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order:

1. The state Emergency Operations Plan is activated.
2. The state Drought Response Plan is activated.
3. The state Drought Response Committee is activated and shall:
 - a. review hardships and unmet needs caused by the drought;
 - b. identify and recommend action to meet those needs;
 - c. ensure inter-agency coordination in addressing those needs; and
 - d. recommend when deactivation of the state Drought Response should occur.

This Order is effective immediately and shall remain in effect for 30 days unless the Legislature extends the state of emergency.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 13th day of May, 2021.

(State Seal)

Spencer J. Cox
Governor

ATTEST:

Deidre M. Henderson
Lieutenant Governor

2021/13/EO

PROCLAMATION

2021-1S

WHEREAS, since the adjournment of the 2021 General Session of the Sixty-fourth Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-fourth Legislature of the State of Utah into a First Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 19th day of May 2021, at 9:30 a.m., to consider the following:

1. authorizing the state to accept certain federal funds made available to Utah by the federal government through the American Rescue Plan Act of 2021;
2. appropriating federal funds made available to Utah by the federal government through the American Rescue Plan Act of 2021;
3. making changes to fiscal years 2021 and 2022 budgets and appropriations intent language;
4. amending local government building regulations;
5. amending industrial hemp regulations; and
6. addressing HB 410, Juvenile Justice Amendments which passed during the 2021 General Session and was rejected during the enrolling process due to the lack of an enacting clause;
7. amending provisions of the Health Spa Services Protection Act to amend provisions relating to: the assignment of a contract for a health spa service; the definition of a consumer's "primary location"; and the requirements for exemptions relating to bonds, letters of credit, or certificates of deposit;

8. adjusting effective dates for provision in HB 162, Peace Officer Training Amendments and HB334, Special Needs Training for Law Enforcement Amendments, both of which passed during the 2021 General Session and was signed by the governor;
9. amending public notice requirements of certain government actions to address an unintended consequence of eliminating newspaper publication requirements in SB 201, Public Notice Amendments which passed during the 2021 General Session and was signed by the governor;
10. adjusting funding sources for projects itemized in HB 433, Amendments Related to Infrastructure Funding, which passed during the 2021 General Session and was signed by the governor;
11. correcting technical errors in SB 51, Group Gang Enhancement Amendments which passed during the 2021 General Session and was signed by the governor;
12. a resolution celebrating the history and cultures of Asian Americans and Pacific Islanders and condemning acts of anti-Asian hate;
13. authorizing UPSTART funds to be used on behalf of kindergarten students who experience learning loss caused by the COVID-19 pandemic;
14. extending the state of emergency for drought conditions;
15. amending the eligibility criteria for peace officers;
16. modifying deadlines relating to the Independent Redistricting Commission;
17. prohibiting certain face mask requirements in K-12 schools;
18. modifying certain grant programs established in response to the COVID-19 pandemic and creating a grant program for local government to enhance the use of federal funds made available by the federal government through the American Rescue Plan Act of 2021;
19. authorizing sheriffs and bail commissioners to release individuals detained in jail before trial on their own recognizance in certain circumstances;
20. amend provisions relating to the sale of electronic cigarette products and nicotine products;
21. to modify or enact statutes to provide mechanisms, policies, and standards to deliver American Rescue Plan Act of 2021 monies; and
22. consenting to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 14th day of May 2021.

(State Seal)

Spencer J. Cox
Governor

ATTEST:

Deidre M. Henderson
Lieutenant Governor

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between May 01, 2021, 12:00 a.m., and May 14, 2021, 11:59 p.m. are included in this, the June 01, 2021, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least July 01, 2021. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 29, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R68-7	Filing No. 53549

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-7. Utah Pesticide Control Rule
3. Purpose of the new rule or reason for the change:
Significant changes are needed to make this rule more consistent with the Utah Code, the Utah Rulewriting Manual, and 2017 regulatory changes published by the Environmental Protection Agency (EPA).
4. Summary of the new rule or change:
The changes include updates and clarifications to make the rule consistent with EPA standards including changes to: pesticide certification categories; applicator certification, recertification, and licensing requirements and procedures; pesticide applicator testing procedures; pesticide business licensing requirements; pesticide applicator and business licensee responsibilities; recordkeeping requirements; and pesticide application requirements. The changes also add the requirement to this rule that all pesticide applicators provide spill kits in each service vehicle. Finally, the changes also include nonsubstantive grammatical and spelling edits and other edits that make this rule text more consistent with the requirements of the Utah Rulewriting Manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There should be no anticipated cost or savings to the state budget. The costs to administer the program should not change and no fees charged to pesticide licensees have changed.
B) Local governments:
There are no anticipated costs or savings to local governments because they do not participate in the pesticide program.
C) Small businesses ("small business" means a business employing 1-49 persons):
There will be some additional cost to small businesses because the changes require that licensed pesticide applicators purchase a spill kit that could cost approximately \$35. Each business would need at least two spill kits, one for their storage area and one for their service truck for a total cost of \$70 per business. The vast majority (estimated 90%) of the current 4,000 licensees qualify as small businesses. The total cost for 3,600 licensees to purchase two spill kits each would be approximately \$252,000. The kits should last indefinitely so the cost will only be applicable in FY 2021.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There will be some additional cost to non-small businesses because the changes require that licensed pesticide applicators purchase a spill kit that could cost approximately \$35. Each business would need at least two spill kits, one for their storage area and one for their storage truck for a total cost of \$70 per business. A small portion of the current 4,000 licensees (estimated 10%) qualify as non-small businesses. The total cost for 400 licensees to purchase two spill kits each would be approximately \$28,000. The kits should last indefinitely so the cost will only be applicable in FY 2021.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
Other persons should not be affected by these changes because they do not participate in or administer the Department of Agriculture and Food's pesticide program.
F) Compliance costs for affected persons:
Compliance cost will increase by approximately \$70 for each applicator or business licensee that is required to purchase two spill kits. The kits should last indefinitely so the cost will only be applicable in FY 2021.

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	\$252,000	\$0	\$0
Non-Small Businesses	\$28,000	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$280,000	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(280,000)	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approves the regulatory impact analysis.

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

These changes will have a small one-time fiscal impact on businesses in Utah, however, the spill kits that licensees will be required to purchase will ultimately add to program safety and protect the public from pesticide spills.

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

Craig W. Buttars, Commissioner

Citation Information

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

Section 4-14-106

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	EPA Worker Protection Standard, 40 CFR 170
Publisher	US Federal Government
Date Issued	January 2, 2017

Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	05/14/2021
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R68. Agriculture and Food, Plant Industry.

~~R68 7. Utah Pesticide Control Rule.~~

~~R68 7.1. Authority.~~

~~Promulgated under authority of Section 4-14-106.~~

~~R68 7.2. Registration of Products.~~

~~All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.~~

NOTICES OF PROPOSED RULES

~~(1) Application for registration shall be made to the Department on forms prescribed and provided by them and shall include the following information:~~

~~(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.~~

~~(b) The name of the pesticide.~~

~~(c) A complete copy of the label which will appear on the pesticide.~~

~~(2) The Department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the Department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.~~

~~(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.~~

~~(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,~~

~~(a) the product remains in the manufacturer's or registrant's original container; and~~

~~(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.~~

~~(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective.~~

~~(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the Department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-103.~~

~~(7) The Department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).~~

~~(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-103 of the Utah Pesticide Control Act.~~

~~(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-105 of the Utah Pesticide Control Act.~~

~~(10) A registration fee determined by the Department, pursuant to Subsection 4-2-103(2), shall be paid annually for each product, regardless of the number of products registered per applicant.~~

~~(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the Department, pursuant to Subsection 4-2-103(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.~~

~~R68-7-3. Product Labeling.~~

~~(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-104.~~

~~(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.~~

~~R68-7-4. Classification of Pesticides.~~

~~The commissioner shall classify all pesticide products registered in Utah for "restricted use" or "general use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. The Commissioner may also restrict the use of additional pesticides if it is found that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.~~

~~R68-7-5. Classification of Pesticide Applicators.~~

~~Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:~~

~~(1) Commercial Applicator—any person who uses any pesticide for hire or compensation.~~

~~(2) Non-commercial Applicator—any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.~~

~~(3) Private Applicator—any person or his/her employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.~~

~~R68-7-6. Categorization of Pesticide Applicators.~~

~~Commercial and Non-commercial applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.~~

~~(1) Agricultural Pest Control.~~

~~(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.~~

~~(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large scale use of pesticides, are included in this category.~~

~~(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.~~

~~(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control ornamental and turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.~~

~~_____ (4) Seed Treatment. This category includes applicators using pesticides on seeds.~~

~~_____ (5) Aquatic Pest Control.~~

~~_____ (a) Surface Water. This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health related activities included in R68-7-6(8).~~

~~_____ (b) Sewer Root Control. This category includes applicators using pesticides to control roots in sewers or in related systems.~~

~~_____ (6) Right of Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights of way, or other similar areas.~~

~~_____ (7) Structural and Health related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and immediately adjacent areas, public or private; to control household pests, fabric pests, and stored product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and immediately adjacent to buildings. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. If the labeling for the structural pesticide permits structural use on structural pests and calls for application beyond three feet the application can be made, but cannot exceed the maximum distance prescribed by the label.~~

~~_____ (8) Public Health Pest Control. This category includes applicators applying the use of pesticides for the management and control of pests having medical and public health importance.~~

~~_____ (9) Regulatory Pest Control.~~

~~_____ (a) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.~~

~~_____ (b) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.~~

~~_____ (10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.~~

~~_____ (11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial Application Pest Control Category and any other categories of intended application.~~

~~_____ (12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.~~

~~_____ (13) Fumigation/Stored Commodities Pest Control. This category includes applicators using fumigants to control pests in, on, or around soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.~~

~~_____ (14) Wood Preservation Pest Control. This category includes applicators who apply wood preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.~~

~~_____ (15) Wood Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites,~~

~~carpenter ants, wood boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.~~

~~R68-7-7. Standards of Competence for Certification of Applicators.~~

~~_____ Applicators must be at least 16 years of age and demonstrate competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-8 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.~~

~~_____ (1) Commercial and Non-Commercial Applicators.~~

~~_____ Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.~~

~~_____ (a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:~~

~~_____ (i) Persons conducting laboratory type research involving pesticides; and~~

~~_____ (ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.~~

~~_____ (2) Aerial Application. Additional Standards.~~

~~_____ Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.~~

~~_____ (3) Private Applicators. Private applicators shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.~~

~~_____ (4) Supervision of Non-Certified Applicators by Certified Private Applicators.~~

~~_____ (a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his/her instruction and control.~~

~~_____ (b) A certified private applicator shall provide written or oral instruction for the application of a restricted use pesticide applied by a non-certified applicator under his/her supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the~~

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applicator. The instructions shall include procedures for contacting the certified applicator in the event he/she is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide business license as described in 4-14-111 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business license fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 5-9 commercial pesticide applicators and 10 or more commercial pesticide applicators.

(a) Application for such licenses shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed as a commercial applicator. An applicator and business license fee determined by the Department, pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification.

(b) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(c) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(d) If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Utah is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(e) Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which applications are made.

(f) A franchised business shall have a separate license and a separate certified applicator at each business location.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational material fees determined by the Department, pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification

examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he/she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again; the original certification fee and any retesting fees will not be refunded.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the Department shall issue a commercial applicator's license. The license shall expire December 31 of the third calendar year unless it has been revoked or suspended by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following three calendar years.

(6) License Recertification.

(a) Each license shall expire on December 31 of the third calendar year of its issuance. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(b) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

~~_____ (d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide product as sold by the manufacturer) applied per unit area and total amount of diluted pesticide used;~~

~~_____ (e) Purpose of application (target site and pest to be treated);~~

~~_____ (f) The name, business address and license number of the certified applicator who applied the pesticide.~~

~~_____ Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.~~

~~_____ (8) Exemption.~~

~~_____ The provisions of this section relating to pesticide licenses and requirements for their issuance do not apply to private pesticide applicators using pesticides in the production of any agricultural commodity and applying pesticides for his/her neighbors provided he/she operates and maintains pesticide application equipment for his/her own use, is not engaged in the business of applying pesticides for hire or compensation in any form other than trading of services between producers of agricultural commodities, does not publicly represent himself/herself as a pesticide applicator, and operates his/her pesticide application equipment only in the vicinity of his/her owned or rented property; provided, however, that when he/she applies a restricted use pesticide, he/she shall comply with the certification requirements specified herein.~~

~~_____ (B) Non-Commercial Applicators.~~

~~_____ (1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the Department. Application for such license shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying restricted use pesticides must be licensed.~~

~~_____ (2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the Department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational material fees determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he or she~~

~~will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again. The original certification fee and any retesting fees will not be refunded.~~

~~_____ (3) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classification(s) applied for, the Department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a non-commercial license is denied the applicant shall be informed of the reason.~~

~~_____ (4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.~~

~~_____ (5) License Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.~~

~~_____ Recertification options are:~~

~~_____ (a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;~~

~~_____ (b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;~~

~~_____ (c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.~~

~~_____ (6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:~~

~~_____ (a) Name and address of property owner;~~

~~_____ (b) Location of treatment site, if different from (a);~~

~~_____ (c) The month, day and year when the pesticide was applied;~~

~~_____ (d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide concentrate product as sold by the manufacturer) applied per unit area, and total amount of diluted pesticide used;~~

~~_____ (e) Purpose of application (target site and pest to be treated);~~

~~_____ (f) The name, address, and license number of the certified applicator who applied the pesticide.~~

~~_____ Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.~~

~~_____ (7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public health related~~

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activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted use pesticide without a private applicator's license issued by the Department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the Department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the Department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency Use Permit. A single restricted use pesticide may be purchased and used by a non-certified person on a one time only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one time only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted use pesticides.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational material fees determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the Department, by satisfying any of the following procedures or any other requirements specified by the Department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate six credits of approved continuing education during the valid three years of certification.

(d) Records Maintained. Private applicators must keep and maintain records according to United States Department of Agriculture (USDA) requirements.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out of State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the Department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his/her credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The Department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out of state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

(F) Change of Licensee Information

(1) Every certified commercial, non-commercial, and private applicator shall notify the Department of any change in, but not limited to applicator's name, address, and phone number and/or change of employer within 30 calendar days of the change.

(2) Every commercial pesticide business licensee shall notify the Department of any changes in, including but not limited to, ownership, company name, owner or manager's name company address, and phone number within 30 calendar days of the change.

(a) Business licenses are nontransferable, and in case of a change in business ownership, a new application and fee are required.

R68-79. Dealer Licensing.

(A) In order to facilitate rules of the distribution and sale of restricted use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained a license from the Department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted use pesticide directly into Utah shall obtain a pesticide dealer's license for his/her principal out of state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only

through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the Department and shall be accompanied by a license fee determined by the Department pursuant to subsection 4-2-103(2). If the Department finds the applicant qualified to sell or distribute restricted use pesticides and the applicant has paid the prescribed license fee, the Department shall issue a restricted use pesticides dealer's license. This license shall expire December 31 of the third calendar year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-14.

(3) License Renewal. License renewal fees are payable triennially before January 1. If the renewal of a pesticide dealer's license is not received prior to January 1 of the renewal year, an additional fee determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted use pesticides is required by the Department to maintain a restricted use pesticide sales register by entering all restricted use pesticide sales into the register at the time of sale. The restricted use pesticide sales register must be available in an electronic format approved by the Department. The electronic register form, shall include the following information:

- (a) The Corporate or Company Name.
 - (b) The name of the branch store that made the sale.
 - (c) The store's complete Restricted Use Pesticide dealer license number, including the prefix.
 - (d) The complete sale date including the month, day and year.
 - (e) The first and last name of the salesperson that made the sale.
 - (f) The first and last name of the buyer.
 - (g) The buyer's complete Pesticide Applicator License number, including the prefix.
 - (h) If the buyer was authorized by letter, the authorization letter must be kept on file.
 - (i) If the buyer used a temporary permit, a copy of the permit must be kept on file.
 - (j) The buyer's complete street address, city, state and zip code.
 - (k) The brand name of the product sold, its EPA Registration Number and the quantity sold.
 - (l) The product container size and its unit of measure (i.e. gallons, liters, etc.). Such records shall be kept for a period of two years from the date of restricted use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted use pesticide dealer.
- (5) Submission of Electronic records. On July 1 of each year, Dealers are required to submit their Restricted Use Pesticide sales records for the period starting the previous July 1 through June 30 of the current year. The due date for submission is July 31 of the current year.
- (6) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted use pesticides only as an integral part of his/her pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provides restricted use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(7) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him/her in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of restricted use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

R68-7-10. Responsibilities of Business and Applicator.

- (A) Business Licensee Duties and Responsibilities
- (1) A business licensee shall ensure that a qualifying party (licensed applicator) of the business licensee receives the training that the applicator requires to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.
- (B) Responsibility for business and employee(s)
- (1) A business licensee, qualifying party and/or applicator may be held responsible for the acts or omissions of another person who is employed by the business licensee. It is the business' responsibility to properly train, equip, and prepare the other person(s) and maintain records of proper training and equipping.
- (2) Failure to fully respond to requests by the commissioner's designated agent, in a stated time, for information relating to training and equipping will be evidence for a failure to properly train or equip. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the commissioner.
- (C) Use of business name and license number.
- (1) A business licensee must prominently display the license issued by the Department at the primary business office and each branch office.
- (2) A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Department, on:
- (a) Customer proposals or contracts for pest management services;
 - (b) Service records and service notifications;
 - (c) Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number is displayed on a service vehicle or trailer used in providing pest management services conforms to the following:
 - (i) Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Department issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner.
 - (ii) Is in a color that contrasts with the color of the service vehicle and trailer;
 - (iii) Is prominently displayed on both sides of the service vehicle or trailer;
 - (iv) Uses at least two inch letters for the principal words in the business name and at least one and one half inch letters for other words in the business name; and
 - (v) Uses at least two inch numbers for the license number.
 - (vi) Letters and numbers must be weatherproof.
- (3) A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (2)(c). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (2)(c).

~~_____ (4) When complying with subsection (2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.~~

~~_____ (D) Customer Notification:~~

~~_____ (1) Prior to the time of each application of a restricted-use pesticide with a Danger/Danger Poison signal word, the licensed commercial applicator or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:~~

~~_____ (a) Business name and telephone number of the licensed business.~~

~~_____ (b) Name and license number of the licensed applicator who made the application~~

~~_____ (c) Date and time of application.~~

~~_____ (d) Type of pesticide application service and brand name of pesticide(s) applied.~~

~~_____ (e) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.~~

~~_____ (2) The written statement required in subsection (1) shall be provided to the customer by any of the following means:~~

~~_____ (a) Leave at the residence.~~

~~_____ (b) In the case of a multiunit residence leave with the property manager or his/her authorized representative, or~~

~~_____ (c) Mail to the property manager or his/her authorized representative if management is located at a location other than the pesticide application site, within seven (7) calendar days prior to the date of the pesticide application.~~

R68 7-11. Termiticide Record Keeping-Additional Standards.

~~_____ (A) In addition to the recordkeeping requirements contained in R68 7-8, the applicator will keep as records a diagram/graph of the structure treated that includes dimensions of the structure, including depth to footer.~~

~~_____ (B) For post construction treatments the diagram/graph will also illustrate the area(s) where termites and/or termite activity was found.~~

~~_____ (C) All records of applications for every individual structure must be kept together.~~

R68 7-12. Minimum Standards for Fumigant Applications.

~~_____ (A) Application of fumigant products require strict adherence to the label and when required by the label, a verified and written Fumigation Management Plan (FMP) must be prepared in advance of treatment. A FMP must detail the information prescribed by the label. State standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:~~

~~_____ (1) Persons present at the time of releasing the fumigant and during the initial ventilation.~~

~~_____ (a) There shall be at least two persons, one of whom must be a certified applicator in the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any person(s).~~

~~_____ (2) Notification of local fire department and/or first responders.~~

~~_____ (a) Prior to fumigation of any building or enclosed space, other than a fumigating vault, the certified applicator shall notify and provide the local fire department with the address of the fumigation job,~~

~~time of gas release, kind of gas to be used, and beginning time of the aeration of the premises.~~

~~_____ (3) Premises sealed.~~

~~_____ (a) Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.~~

~~_____ (4) Inspection of premises prior to releasing fumigant~~

~~_____ (a) Immediately before releasing the fumigant, the fumigator shall conduct a thorough inspection of the premises to verify that no person(s) or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.~~

~~_____ (5) Fumigation of apartments within a multiple unit apartment building.~~

~~_____ (a) Fumigation of apartments within a multiple unit apartment building may be fumigated only after proper sealing of the area being fumigated and after all apartments are vacated.~~

~~_____ (b) All the adjacent units shall be properly ventilated during the entire exposure period.~~

~~_____ (6) Notification of all dwellings or places of business within 100 feet of building being fumigated.~~

~~_____ (a) All dwellings or places of business within 100 feet of the building being fumigated must be notified in writing in advance of the fumigation.~~

~~_____ (b) All premises within 10 feet must be vacated during the fumigation and aeration periods.~~

~~_____ (7) Warning signs.~~

~~_____ (a) Warning signs shall be posted conspicuously at all entrances of the premise to be fumigated and at the entrances of all adjacent multiple units and structures within 10 feet and kept there during the entire fumigation and ventilation period. Signs shall be a minimum size of 8 1/2 inches by 11 inches and color to be conspicuous and bearing the word "poison" and display the skull and cross-bones, the name of the fumigant used, and the name, address and telephone number of the fumigator.~~

~~_____ (b) Before the fumigant is released, all entrances leading directly to the fumigated space shall be closed, sealed, and locked except exits to be used by fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.~~

~~_____ (8) Masks worn.~~

~~_____ (a) All members of the fumigating crew must be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with correct canister for the type of gas used.~~

~~_____ (b) Masks shall be worn while in the enclosed space during and after release of the gas, and until initial ventilation is completed.~~

~~_____ (9) Re-entering fumigated premises~~

~~_____ (a) No one other than the fumigator shall be permitted to re-enter the fumigated premises until the fumigator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.~~

~~_____ (b) Aeration must be conducted according to the product labeling and re-entry allowed according to levels specified on the label.~~

~~_____ (10) Exceptions~~

~~_____ (a) The subparts 1 through 9 may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.~~

~~_____ (i) Strict adherence to the label instructions must be adhered to during these applications.~~

~~_____ (ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the fumigator.~~

~~(iii) A warning gas is recommended where the fumigant is comparatively odorless.~~

~~(B) Fumigation of Burrowing Rodents require strict adherence to the label as well as a Fumigation Management Plan (FMP) that must contain the following information.~~

~~(1) Purpose of the application, indicate the exact pest to be controlled and the type of burrow system to be treated.~~

~~(2) Pesticide used. State the name of the pesticide, the EPA registration number, and dosage used.~~

~~(3) Property treated information. Record the property or facilities name and address. Verify the manager's name, and contact information.~~

~~(4) Licensed applicator information. Record licensed applicator's name, company, license number, phone numbers.~~

~~(5) Emergency Information. Note the phone number for the nearest hospital, fire department, police department, poison control center and the registrant of the fumigant.~~

~~(6) Instructions to personnel. Verify by signatures that all personnel has been instructed to:~~

~~(a) Report any accident or incident related to exposure, provide a telephone number for emergency response reporting.~~

~~(b) Report to proper authorities any theft of fumigant and/or equipment related to fumigation.~~

~~(7) Follow label directions. Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions are to be followed per label instructions.~~

~~(8) Burrowing Rodent Fumigation Record Keeping. Additional Standards.~~

~~(a) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as part of the record a diagram/graph (to scale) of the property treated that includes dimensions of the property, any structure present, and mark each burrow treated on the diagram or graph.~~

R68-7-13. Transportation, Storage, Handling, Using and Disposal of Pesticides and Pesticide Containers.

All pesticide applying entities shall provide a secure pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, other nontarget species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not injure humans, other nontarget species, or the environment. Pesticides with obscured, illegible or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container and the registered pesticide label is affixed to the container.

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause

damage or injury to land, humans, desirable plants and animals, or wildlife. Provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent back siphoning shall be used.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting and/or adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, injure humans, other nontarget species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Generally accepted good housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (11) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., appropriate triple rinsing or other label approved cleaning techniques).

(c) For the purposes of (d) and (e) of this subsection and subsection (11) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals as to ensure safe monitoring of the pesticides and containers.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in a way which, when unattended, shall be so constructed and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in an enclosure as described in (d) of this subsection. Provided that metal containers, twenty-eight gallons and larger, with tight screw type bungs and/or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two inch letters.

(b) Warning signs shall be posted:

(i) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(ii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section 152.3 and Part 165, Subparts A through E.

R68-7-14. Unlawful Acts.

~~Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-301 through 4-2-305:~~

- ~~(1) Made false, fictitious, or fraudulent claims, written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;~~
- ~~(2) Applied known ineffective or improper pesticides;~~
- ~~(3) Operated in a faulty, careless or negligent manner;~~
- ~~(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;~~
- ~~(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;~~
- ~~(6) Made false or fraudulent records, invoices or reports;~~
- ~~(7) Engaged in the business of, advertised for, or held self out as applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;~~
- ~~(8) Purchased, Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator or designated as a certified private applicators agent;~~
- ~~(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;~~
- ~~(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;~~
- ~~(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;~~
- ~~(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;~~
- ~~(13) Impersonated any federal, state, county, or other government official;~~
- ~~(14) Distributed any pesticide labeled for restricted use to any person unless such person or his/her agent has a valid license, or permit to use, supervise the use, or distribute restricted use pesticide;~~
- ~~(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.~~
- ~~(16) For an applicator to apply a termiticide at less than label rate.~~
- ~~(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide(s) before that individual has successfully completed the prescribed pesticide certification procedures.~~
- ~~(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.~~
- ~~(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.~~
- ~~(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food or follow the rules set forth in section R68-7-8 for licensing of a commercial business.~~
- ~~(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.~~
- ~~(22) Refused or neglected to comply with the Federal Container and Containment regulations.~~

~~(23) Failure to perform fumigation applications according to the standards required by this rule.~~

~~(24) Failed to display business license numbers in accordance with this rule.~~

~~(25) Refused or neglected to notify the customer of the application of a restricted use pesticide and the information detailed in R68-7-10.~~

~~(26) Failure of a qualifying party of the business licensee to train or prepare the applicator to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.~~

~~(27) Failure to timely and fully respond to requests by the commissioners designated agent for information relating to training and equipping of applicators.~~

~~(28) Transported, stored, handled, used, or disposed of a pesticide or pesticides container inconsistent with rules specified in section R68-7-13.~~

R68-7-15. Penalty Matrix.

~~In the disposition of administrative cases, the Department shall use a penalty matrix to determine appropriate penalties. The Department shall calculate penalties based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.~~

~~(1) The Department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include, but are not limited to, the following:~~

~~(a) The number of separate alleged violations contained within a single notice of intent.~~

~~(b) The magnitude of the harm, or potential harm, including quantity and/or degree, to humans, nontarget species, property, or the environment caused by the violation(s).~~

~~(c) The similarity of the current alleged violation to violations committed by the pesticide applicator and/or business during previous years.~~

~~(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.~~

~~(2) The Department will annually review past violation trends and update the penalty matrix based on compliance history.~~

~~(a) A copy of the penalty matrix will be made available from the Department upon request.]~~

R68-7. Utah Pesticide Control Rule.

~~For the purposes of this rule, "Department or department" means the Utah Department of Agriculture and Food.~~

R68-7-1. Authority.

~~Promulgated under authority of Section 4-14-106.~~

R68-7-2. Definitions.

~~(1) "Commercial pesticide applicator" means any person who uses or applies pesticides for hire or compensation, or who makes pesticidal claims, remedies, or advertises for hire or compensation, or who solicits the use of pesticides for hire or compensation.~~

~~(2) "Commercial pesticide business license" means a license issued by the department to a business responsible for supervising commercial pesticide applicators employed to apply pesticides on a commercial basis.~~

~~(3) "EPA WPS" means the U.S. Environmental Protection Agency (EPA) Worker Protection Standard, or the standards~~

described in 40 CFR 170, as of January 2, 2017, which is herein incorporated by reference.

(4) "EPA WPS Trainer" means a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements and may also be a graduate of an EPA approved WPS Train the Trainer Program.

(5) "Good standing" means a person has no outstanding infractions with the department and does not owe money to the department. A person who has resolved their infractions, entered into and complying with a settlement agreement with the department or who has not exhausted their rights to appeal are potentially excluded from this categorization with department approval.

(6) "Licensee" means the holder of a pesticide applicator license or a commercial pesticide business license issued by the department or a restricted use pesticide dealer.

(7) "Non-commercial pesticide applicator" means any person working as an employee of any entity, firm, or government agency who uses or demonstrates the use of any restricted use pesticide on the entity's property, nor requires a commercial pesticide applicator's license.

(8) "Pesticide" means the same as the term is defined in Section 4-14-102.

(9) "Pesticide applicator" or "applicator" means a person who:

- (a) applies or supervises the application of a pesticide; or
- (b) is required by Title 4, Chapter 14, Utah Pesticide Control Act, to have a license.

(10) "Person" means an individual or entity

(11) "Private pesticide applicator" means any person who uses, or supervises the use of, any restricted use pesticide for the purpose of producing any agricultural commodity on private property owned, rented, or leased by the pesticide applicator, or on the private property of another, if applied without compensation.

(12) "Qualifying party" means the same as the term is defined in Section 4-14-102.

(13) "Registrant" means the company responsible for the registration of a pesticide product.

(14) "Restricted use pesticide" or "RUP" means any pesticide or pesticide use restricted by the administrator of EPA or by the department.

R68-7-3. Registration of Products.

Pesticide products distributed in Utah shall be registered annually with the department.

(1) Application for registration shall be made to the department on the department website, or on forms prepared and provided by the department, and shall include the following information:

(a) The name, address, telephone number, and email address of the registrant, and the name, address, telephone number, and email address of the company whose name will appear on the label, if other than the registrant;

(b) the name of the pesticide product, including the EPA Registration Number;

(c) a list of the active ingredients;

(d) if the product is an RUP, a general use pesticide, or a product claiming a Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), 7 U.S.C Section 136 *et seq* Section 25(b) exemption; and

(e) a complete copy of the pesticide product label as it will appear on the pesticide product.

(2) The burden shall be on the registrant to notify the department of any changes to their contact information within 30 days.

(3) The department may require submission of the complete formula of any pesticide if it is deemed necessary for the administration of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, or to enforce EPA requirements and guidelines.

(4) The product shall be registered if:

(a) it appears to the department that the composition of the product warrants the proposed claims for the product; and

(b) the product, its labeling, and any other information that may be required to be submitted, complies with the requirements of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, and EPA rules, requirements and guidelines

(5) The registrant is responsible for the accuracy and completeness of the information submitted concerning any application for the registration of a pesticide product.

(6) Once a pesticide product is registered no further state registration other than annual renewal is required, provided:

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information does not differ in substance from the representations made in connection with the registration.

(7) Any terms, claim, or non-numerical or comparative statement that cannot be well defined, and may be misconstrued by consumers as a health or safety claim, shall not be used on a pesticide product label. This includes language such as:

(a) "organic", "natural", "all-natural", "pesticide-free", "chemical-free", "trusted", "safe", "nonpoisonous", "non-injurious", "harmless", or "nontoxic to humans and pets"; and

(b) any similar language that infers a health or safety claim as determined by the department in its sole discretion.

(c) The only exceptions to this requirement are the terms "for organic production", "for organic gardening", "for organic lawn care", "for use in organic production", and "safe when used as directed". These exemptions are only valid if the language can be found on the department or EPA approved label.

(d) If the department identifies a product label that is not in compliance with this standard, they shall notify the registrant and issue a citation.

(8) If the name of a pesticide product is changed or there are changes in the product ingredients, a new registration is required. Other labeling changes do not require a new registration, but the registrant shall submit copies of any changes to the department as soon as they are effective.

(9) If a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the EPA, the licensee shall provide notice of discontinuation to the department.

(a) The department requires that a product be registered for a two-year discontinuation period starting from the date of the notice of discontinuation.

(b) If a product is found in commercial trade after the discontinuation period, the department shall require that the registrant register the product as outlined in Section 4-14-103.

(c) If a product is suspended or canceled by the EPA, the product shall be removed as quickly as reasonably possible from sale in Utah.

(10) The department may exempt, in its sole discretion, any pesticide that is determined either:

- (a) to be adequately regulated by a federal agency; or
- (b) to be of a character that is not subject to FIFRA.

(11) A registrant who desires to register a pesticide to meet special local needs pursuant to FIFRA Section 24(c) shall comply with Section 4-14-103.

(12) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-105.

(13) A registration fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid annually for each product.

(14) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-103(2). The renewal fee shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of each year, an additional fee determined by the department, pursuant to Subsection 4-2-103(2), shall be assessed and added to the original registration fee, and shall be paid by the applicant before the registration renewal for that pesticide will be issued.

R68-7-4. Product Labeling.

(1) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-104.

(2) Each pesticide label shall contain the statements, words, graphic material, and any other information required by the EPA in 40 CFR 156.

R68-7-5. Classification of Pesticides.

(1) The department shall classify each pesticide product registered in Utah for either restricted use or general use according to standards consistent with FIFRA Section 3.

(2) The department may also classify other substances as pesticides or restrict the use of any substance as a pesticide if the department determines, in its sole discretion, that such a substance may pose a risk to the health or safety of the public or the environment.

(3) Restricted use pesticides shall not be used by any person that does not have a valid pesticide applicator license with the appropriate category for its use, except they may be used by:

(a) a pesticide handler, supervised by a certified pesticide applicator under the EPA WPS and who meets the qualifications in Subsection R68-7-6(6); or

(b) a pesticide handler acting upon an emergency use permit issued under this rule.

R68-7-6. Certification of Pesticide Applicators.

(1) A pesticide applicator shall be certified by the department as a commercial pesticide applicator, non-commercial pesticide applicator, or a private pesticide applicator.

(2) A pesticide applicator shall comply with FIFRA and Title 4, Chapter 14, Utah Pesticide Control Act.

(3) A pesticide applicator shall follow the directions on a pesticide product label.

(4) To be certified, a pesticide applicator shall be at least eighteen years of age.

(5) A commercial pesticide applicator may use restricted use, general use, or any other classification of pesticide, including FIFRA Section 25(b) products.

(6) A person who is at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family member, according to the family exemption of the EPA WPS, if they only apply pesticides on the privately owned agricultural

establishment of a certified pesticide applicator who is also an immediate family member.

(7) An EPA WPS trainer is a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements under 40 CFR 170.

(8) An EPA WPS trainer may also be a graduate of an EPA approved WPS Train the Trainer Program, as set forth in 40 CFR 170.

(9) Commercial and non-commercial EPA WPS trainers shall have the Agricultural Pest Control: Plant Pesticide category on their license, pursuant to Section R68-7-8.

R68-7-7. Pesticide Certification Categories.

Pesticide applicators shall also be certified by the department in one or more of the pest control categories defined below:

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators applying pesticides to control pests in the production of agricultural crops including field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators applying pesticides on animals including beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine, or their employees, engaged in applying pesticides for hire, publicly representing themselves as pesticide applicators, or engaged in the use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators applying pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators applying pesticides to control ornamental and turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators applying pesticides on seeds in seed treatment facilities.

(5) Aquatic Pest Control.

(a) Surface Water. This category includes applicators applying pesticides to control pests in standing or running water. This pesticide category does not include applicators engaged in public health related activities included in Subsection R68-7-8(8).

(b) Sewer Root Control. This category includes applicators applying pesticides to control roots in sewers or other related systems.

(6) Right-of-Way Pest Control. This category includes applicators applying pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health Related Pest Control. This category includes applicators applying pesticides in, on, or around any public or private food handling establishment; dwelling, educational institution, or medical institution; industrial building; business establishment; packing house; food-processing facility; prison; manufacturing facility; grain elevator; or any other structure or area, or immediately adjacent structure or area, to control pests. This category excludes any fumigation pesticide applications. This category includes applicators applying pesticides on vertebrate pests in buildings and structures, and immediately adjacent to, or no further than three feet from, buildings and structures. If the label for a structural pesticide permits the use of the pesticide more than three feet from the structure, then the pesticide may be used beyond three

feet from the structure, but may not exceed the maximum distance permitted by the label.

(8) Public Health Pest Control.

(a) Commercial. This category is limited to commercial pesticide applicators who apply pesticides for the management and control of pests due to issues of medical and public health importance. This category is only valid when the pesticide applicator is actively contracted by a government entity, and is actively engaged in applying pesticides for that government entity.

(b) Non-Commercial. This category is limited to state and federal employees, county or city governments, or persons under their direct supervision, who apply pesticides in government-sponsored public health programs for the management and control of pests due to issues of medical and public health importance.

(9) Regulatory Pest Control. This category is limited to state and federal employees who:

(a) apply pesticides in a mechanical ejection device; or

(b) apply pesticides in a protective collar or other method to control regulated pests.

(10) Demonstration, Consultation, and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits, and methods of applying restricted use pesticides. This category includes agricultural compliance specialists, educational and university personnel, commercial business representatives, consultants and advisors, and persons conducting field research with restricted use pesticides. In addition to certification in this pesticide category, individuals shall also meet specific standards that may be applicable to their particular pesticide category.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by airplane, drone, helicopter, or any other type of aircraft. Aerial applicators are required to be certified in the Aerial Application Pest Control category, along with any other applicable pest control category for any intended pesticide application. Aerial pesticide applicators shall also possess a valid commercial pilot license, or equivalent remote pilot certifications, issued by the Federal Aviation Administration (FAA).

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides for the outdoor control of vertebrate pests, such as rodents, birds, bats, predators, or domestic animal pests.

(13) Fumigation Pest Control.

(a) Stored Commodities. This category includes applicators applying fumigants to control pests in, on, or around stored grains, grain elevators, mills, structures, railroad cars, manufactured products, or similar areas or items.

(b) Structural. This category includes applicators applying fumigants to control pests while additionally tenting, sealing with filling, or completely enclosing a structure.

(c) Soil. This category includes applicators applying fumigants in and on the soil of agricultural locations.

(14) Wood Preservation Pest Control. This category includes applicators applying preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood product.

(15) Wood Destroying Organisms Pest Control. This category includes applicators applying pesticides to control wood destroying pests, termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi, and any other pests destroying wood products.

R68-7-8. Standards of Competence for Certification of Pesticide Applicators and Pesticide Businesses.

(1) Pesticide applicators shall be at least 18 years of age in order to obtain a commercial, non-commercial, or private pesticide applicator license.

(2) The basic standards for certification of pesticide applicators have been established by the EPA, and shall be the minimum standards required for certification of pesticide applicators in Utah.

(3) Commercial and non-commercial pesticide applicators shall demonstrate competency and practical knowledge by successfully completing the written pesticide applicator core test and any additional pesticide category tests. The pesticide applicator tests shall include core standards applicable to each pesticide category, and the standards specifically identified for each pesticide category, or subcategory, as set forth in 40 C.F.R. 171.103, and the EPA-approved Utah State Pesticide Applicator Certification Plan, including:

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

(i) the general format and terminology of pesticide labels and labeling;

(ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;

(iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;

(iv) understanding labeling requirements that a certified applicator must be physically present at the site of the application;

(v) understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;

(vi) understanding that applicators shall comply with any use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application;

(vii) understanding the meaning of product classification as either general or restricted use and that a product may be unclassified;

(viii) understanding and complying with product-specific notification requirements; and

(ix) recognizing and understanding the difference between mandatory and advisory labeling language;

(b) safety measures to avoid or minimize adverse health effects, including each of the following:

(i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;

(ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;

(iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;

(iv) common types and causes of pesticide mishaps;

(v) precautions to prevent injury to applicators and other individuals in or near treated areas;

(vi) need for, and proper use of, protective clothing and personal protective equipment;

(vii) symptoms of pesticide poisoning;

(viii) first aid and other procedures to be followed in case of a pesticide mishap; and

(ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used

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pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;

(c) the potential environmental consequences of the use and misuse of pesticides, including the influence of each of the following;

(i) weather and other indoor and outdoor climatic conditions;

(ii) types of terrain, soil, or other substrate;

(iii) presence of fish, wildlife, and other non-target organisms; and

(iv) drainage patterns;

(d) the proper identification and effective control of pests, including each of the following:

(i) the importance of correctly identifying target pests and selecting the proper pesticide product for effective pest control; and

(ii) verifying that the labeling does not prohibit the use of the product to control the target pests;

(e) characteristics of pesticides, including each of the following:

(i) types of pesticides;

(ii) types of formulations;

(iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(iv) hazards and residues associated with use;

(v) factors that influence effectiveness or lead to problems such as pesticide resistance; and

(vi) dilution procedures;

(f) application equipment, including each of the following:

(i) types of equipment and advantages and limitations of each type; and

(ii) use, maintenance, and calibration procedures;

(g) selecting appropriate application methods, including each of the following:

(i) methods used to apply various forms and formulations of pesticides;

(ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, sodium cyanide, or sodium fluoroacetate requires additional certification;

(iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and

(iv) prevention of drift and pesticide loss into the environment;

(h) knowledge of all applicable state, tribal, and federal laws and regulations.; and

(i) professionalism, including understanding the importance of each of the following:

(i) maintaining chemical security for restricted use pesticides;

(ii) how to communicate information about pesticide exposures and risks with customers and the public; and

(iii) appropriate product stewardship for certified applicators.

(4) The standards for commercial, non-commercial, and private applicators do not apply to the following persons for the purposes of this rule:

(a) persons conducting research involving restricted use pesticides;

(b) doctors of medicine and doctors of veterinary medicine applying pesticides, drugs, or medication during the course of their normal practice, and who do not publicly represent themselves as pesticide applicators;

(c) persons using a general use disinfectant, sanitizer, or deodorizer commercially, and not for the control of insects, weeds, rodents, or similar pests, or use in settings outside of a structure; or

(d) persons using a general use fungicide for interior structural cleaning or interior structural mold remediation.

(5) Aerial Pesticide Applicator. An aerial pesticide applicator shall demonstrate competence and practical knowledge of aerial pest control in a wide variety of environments by successfully completing the aerial pesticide applicator test. Aerial pesticide applicators shall have knowledge of the significance of drift, and of the potential for non-target injury and environmental contamination. Aerial pesticide applicators shall obtain the Aerial Application Pest Control category certification, along with any additional pesticide category certifications for which they shall apply pesticides. Aerial pesticide applicators shall comply with each standard set forth by the FAA, and shall submit proof of current registration with the FAA as an additional requirement for receiving an aerial pesticide applicator certification.

(6) Private Pesticide Applicator. A private pesticide applicator shall demonstrate competence and practical knowledge by successfully completing the private pesticide applicator test, and any required additional pesticide category tests. This knowledge shall include the basic standards for certification of private applicators set forth in 40 CFR 171.105. This includes:

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

(i) the general format and terminology of pesticide labels and labeling;

(ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;

(iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;

(iv) understanding when a certified applicator shall be physically present at the site of the application based on labeling requirements;

(v) Understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;

(vi) understanding that applicators shall comply with each use restriction and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use restricted use pesticides for fumigation or aerial application, or predator control devices containing sodium cyanide or sodium fluoroacetate, if applicable;

(vii) understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified;

(viii) understanding and complying with product-specific notification requirements; and

(ix) recognizing and understanding the difference between mandatory and advisory labeling language;

(b) safety measures to avoid or minimize adverse health effects, including each of the following:

(i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;

(ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;

(iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;

(iv) common types and causes of pesticide mishaps;

(v) precautions to prevent injury to applicators and other individuals in or near treated areas;

(vi) need for, and proper use of, protective clothing and personal protective equipment;

(vii) symptoms of pesticide poisoning;

(viii) first aid and other procedures to be followed in case of a pesticide mishap; and

(ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;

(c) the potential environmental consequences of the use and misuse of pesticides, including the influence of the following:

(i) weather and other climatic conditions;

(ii) types of terrain, soil, or other substrate;

(iii) presence of fish, wildlife, and other non-target organisms; and

(iv) drainage patterns;

(d) the proper identification and effective control of pests, including each of the following:

(i) the importance of correctly identifying target pests and selecting the proper pesticide product; and

(ii) verifying that the labeling does not prohibit the use of the product to control the target pests;

(e) characteristics of pesticides, including all of the following:

(i) types of pesticides;

(ii) types of formulations;

(iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(iv) hazards and residues associated with use;

(v) factors that influence effectiveness or lead to problems such as pesticide resistance; and

(vi) dilution procedures;

(f) application equipment, including each of the following:

(i) types of equipment and advantages and limitations of each type; and

(ii) uses, maintenance, and calibration procedures;

(g) selecting appropriate application methods, including each of the following:

(i) methods used to apply various forms and formulations of pesticides;

(ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification;

(iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and

(iv) prevention of drift and pesticide loss into the environment;

(h) knowledge of each applicable state, tribal, and federal laws and regulations, including understanding the WPS and the circumstances where compliance is required;

(i) certified applicator responsibilities related to supervision of non-certified applicators, including each of the following:

(i) understanding and complying with requirements in 40 C.F.R. 171.201 for private applicators who supervise non-certified applicators using restricted use pesticides;

(ii) providing use-specific instructions to non-certified applicators using restricted use pesticides under the direct supervision of a certified applicator; and

(iii) explaining appropriate state, tribal, and federal laws and regulations to non-certified applicators working under the direct supervision of a certified applicator;

(j) understanding stewardship and the importance of each of the following:

(i) maintaining chemical security for restricted use pesticides; and

(ii) how to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons;

(k) practical knowledge of pest control applications to agricultural commodities including each of the following:

(i) specific pests of relevant agricultural commodities;

(ii) how to avoid contamination of ground and surface waters;

(iii) understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas;

(iv) understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities; and

(v) relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

(7) A licensed private pesticide applicator that functions in a supervisory role shall be responsible for the actions of any non-certified pesticide handlers under their instruction and control.

(8) A private pesticide applicator shall provide non-certified pesticide handlers under their supervision instructions on the EPA WPS pesticide handler applicator training, and keep records of having provided these instructions for a period of two years.

(9) A private pesticide applicator shall be physically present to supervise the application of any pesticide by a non-certified handler, if such presence is required by the label of the pesticide being applied.

R68-7-9. Pesticide Applicator Licensing and Certification Procedures.

(1) Commercial Pesticide Applicator and Commercial Pesticide Business License Required.

(a) Each person performing the physical act of applying a pesticide, shall be certified by the department and have a valid license issued by the department. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the land or property of another at any time without becoming certified as a pesticide applicator, obtaining a commercial pesticide applicator license, and:

(i) obtaining a commercial pesticide business license, as described in Section 4-14-111 issued by the department; or

(ii) working for a company that has already obtained a commercial pesticide business license.

(b) The fees for a commercial pesticide applicator license and a commercial pesticide business license, shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(c) A commercial pesticide applicator license is required for any individual who applies pesticides for a commercial business. No person shall purchase, use, or demonstrate the use of, any restricted use pesticide, or shall apply any pesticide for a commercial

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business, without becoming certified and obtaining a commercial pesticide applicator license issued by the department.

(2) An applicant for a commercial pesticide applicator license shall:

(a) complete an application on the department's website or on forms prepared and provided by the department; and

(b) pay the licensing fees.

(c) A license will only be issued after the applicant has successfully passed the required pesticide applicator tests to become certified, or after recertifying according to the Continuing Education Unit (CEU) requirements.

(d) A testing fee, retest fee, or any related fee, may be determined by department approved testing centers, according to their own individual policies.

(3) An applicant for a commercial pesticide business license shall:

(a) complete an application form provided by the department;

(b) pay the licensing fee;

(c) be in good standing with the department;

(d) demonstrate good character; and

(e) provide evidence that the owner or qualifying party:

(i) is a certified pesticide applicator in the State of Utah;

(ii) is not a designated qualifying party or employee with any other pesticide applicator business;

(iii) has been a certified pesticide applicator for at least two years out of the ten years immediately prior to the date of the commercial pesticide business application; or

(iv) holds an associate degree, or higher, in horticulture, agricultural sciences, biological sciences, pest management, or a related and relevant science degree.

(f) A person applying for a commercial pesticide business license may be exempted from the two year certification requirement if the individual's and entity's sole use of pesticides is limited to:

(i) providing ornamental and turf herbicide spot treatment services as part of a lawn maintenance service; and

(ii) using herbicides with labels that contain the signal word "caution" or "warning".

(g) A commercial pesticide business operating under more than one business identity or name, from a single business location, shall be licensed separately for each business identity or name.

(h) A commercial pesticide business with a single business identity or name, but operating from more than one business location, shall be licensed at each separate business location. Business locations that are used only for pesticide storage and mixing purposes are exempt from licensing requirements, but shall be disclosed to the department.

(i) The department may require a commercial pesticide business license applicant to change their requested business name. This may occur if the applicant requests a business name that is the same, or closely resembles, the name of a currently licensed commercial pesticide business. The department may additionally require a commercial pesticide business, or commercial pesticide business license applicant, to change their business name if the business name could reasonably cause public confusion, public alarm, or public offense. Any determination made pursuant to this subsection shall be at the sole discretion of the department in coordination with the state Division of Corporations. The purpose of this subsection is to ensure compliance with current guidance from the Division of Corporations. The department shall prioritize licensing a business name that is registered with the Division of Corporations

(j) Each licensed commercial pesticide business location shall have a minimum of one certified commercial pesticide applicator at that location who is certified in each pesticide category for which pesticide applications are made.

(k) A franchised commercial pesticide business licensee shall have a separate commercial pesticide business license and a separate certified commercial pesticide applicator at each business location. Additionally, franchised businesses shall be distinctly identifiable from one another, to avoid departmental and public confusion, by adding unique words or numbers to distinguish the different businesses.

(l) If a commercial pesticide business licensee uses a Doing Business As (DBA) name, it shall be listed on the pesticide business application along with the company name. A business may list more than one assumed name on a single registration application. Any DBA shall be registered and active with the Division of Corporations.

R68-7-10. Commercial Pesticide Applicator and Commercial Pesticide Business Testing Procedures.

(1) Commercial Pesticide Applicator Testing. To become certified, an applicant for a commercial pesticide applicator license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the required pesticide applicator tests and department application forms. Each pesticide applicator test shall be proctored at a department approved testing center.

(a) An applicant shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(b) An applicant shall find a testing center from a list of approved testing centers on the department's website.

(c) An applicant shall schedule each required pesticide applicator test with a testing center.

(d) Fees for testing may be established and charged by the testing center, including those operated by the department.

(e) An applicant may acquire study materials from the department website or purchase them from a separate vendor.

(f) An applicant shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(g) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute a violation of this rule and may serve as a basis for a denial of a license application. Applicants are subject to state and federal law and department rules and policies regardless of whether the applicant successfully passes or not.

(h) The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(i) At least one pesticide category test shall be taken and successfully completed with a minimum score of 70% before a license may be obtained.

(j) The steps to re-certify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(k) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(l) when the completion form has been submitted, a license may be issued.

(m) The rules of a testing center, if more restrictive than those of the department, shall take precedence over those of the department during the administration of pesticide applicator tests.

(n) If the minimum score of 70% is not obtained after two attempts, the person taking the tests shall wait at least 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(2) Commercial Pesticide Business Testing. The test shall be taken by the owner, principal agent, manager, or designated qualifying party, and that individual shall be bound by the rules for a commercial pesticide business contained in Subsection R68-7-10(1).

(a) Business license tests may be taken on any computer with internet access.

(b) In the event the individual taking the test does not successfully pass the test with a minimum score of 70%, a commercial pesticide business license shall not be issued.

R68-7-11. Commercial Pesticide Applicator and Commercial Pesticide Business License Issuance.

(1) A temporary pesticide applicator permit shall be issued automatically by email following the successful completion of the pesticide applicator core test in conjunction with each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted. A temporary pesticide applicator permit is invalid if only the pesticide applicator core test is successfully completed and no additional pesticide category test is successfully completed.

(2) The pesticide applicator and pesticide business is responsible for verifying that their license has been processed by the department.

(3) A commercial pesticide applicator license or a commercial pesticide business license shall be issued when the following conditions have been met:

(a) the applicant has submitted an application form to the department;

(b) any required fees have been paid;

(c) the applicant is in good standing with the department;

(d) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications and categories for which they have applied; and

(e) the applicant for the qualifying party for the pesticide business license meets the requirements in Section 4-14-111.

(4) A commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, which may include any combination of the unlawful acts listed in Section R68-7-20.

(5) If an application for a commercial pesticide applicator license or commercial pesticide business license is denied, the applicant shall be informed of the reason by email or mail.

(6) A pesticide applicator is required to have their license in their immediate possession when making a pesticide application.

(7) If a pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(8) A commercial pesticide business license shall be required for each commercial pesticide business location, other than locations used only to store and load pesticides.

(9) A new commercial pesticide applicator or commercial pesticide business license applicant who completes an application completed between November 1 and December 31 shall be licensed for the remainder of that year and the following three calendar years.

(10) Commercial Pesticide Applicator and Commercial Pesticide Business License Recertification and Renewal.

(a) Each commercial pesticide applicator and commercial pesticide business license shall expire on December 31 of the third calendar year following its issuance.

(b) Commercial pesticide applicators shall recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category tests and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulating the required amount of 24 total CEU credits during the licensure period. A minimum of two credits in law, six in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(d) The qualifying party for a commercial pesticide business shall complete the related commercial pesticide business test every three years.

(11) Records Maintained. Commercial applicators shall keep and maintain records of any pesticide applications.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) the name and address of the person or entity for whom the pesticide is applied;

(ii) the address of the pesticide application location, if the pesticide application location differs from Subsection R68-7-11(11)(a)(i) ;

(iii) the total square footage or total size of the area to be treated with pesticides;

(iv) a description of the specific target sites, crops, commodities, or stored products at the pesticide application location to which any pesticides are applied;

(v) the time and date, including the month, day, and year when the pesticide was applied;

(vi) the brand name of the pesticides, EPA registration number, and mix rate for any pesticides applied;

(vii) the total amount of pesticides, including diluted or ready-to-use (RTU) pesticides, applied per location and per application;

(viii) the purpose of the pesticide application, the pesticide target site, and pest to be treated;

(ix) the name, commercial pesticide business address, and commercial pesticide applicator license number of the certified commercial pesticide applicator who applied the pesticides; and

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department upon request.

(d) Records shall be furnished in a uniform format.

(12) Notwithstanding the requirements of this section, the department may give consideration to political subdivisions of the state, or a non-profit organization, regarding their need to obtain a Commercial Pesticide Business License or the requirement of their applicators to obtain a Commercial Pesticide Applicator License.

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(a) Consideration shall be given to political subdivisions if their charter includes a fee for pesticide services or products.

(b) Non-profit organizations may not need to obtain the commercial pesticide business license or the commercial pesticide applicator license to receive reimbursement for applications made on public land owned by the federal government or the state.

(c) Application or distribution of restricted use pesticides shall be done in accordance with this rule.

R68-7-12. Non-Commercial Pesticide Applicators.

(1) Non-Commercial Pesticide Applicator License Required. A non-commercial pesticide applicator license is required for applying restricted use pesticides for a city, county, state, or federal government entity, or for corporations, businesses, or any other entity, that does not require a commercial pesticide applicator license. No person shall purchase, use, or demonstrate the use of any restricted use pesticide without becoming certified and obtaining a non-commercial pesticide applicator license issued by the department. Each person performing the physical act of applying restricted use pesticides shall be certified and have a valid non-commercial pesticide applicator license.

(2) Non-Commercial Pesticide Applicator Application and Fee Requirements. The fees for a non-commercial pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) An application for a non-commercial pesticide applicator license shall be made on the approved department form. A non-commercial pesticide applicator license shall only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to CEU requirements. Each individual performing the physical act of applying restricted use pesticides shall be licensed as a non-commercial pesticide applicator.

(b) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(3) Non-Commercial Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant should schedule required pesticide applicator tests with a testing center approved by the department.

(4) Non-Commercial Pesticide Applicator Testing Procedures.

(a) A new applicant for a non-commercial pesticide license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved pesticide applicator tests and department application forms. Pesticide applicator tests shall be proctored at approved testing centers.

(b) An applicant for a non-commercial pesticide applicator license shall first pay licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a non-commercial pesticide applicator license shall find a testing center from a list of approved testing centers on the department's website.

(d) An applicant for a non-commercial pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under these rules. Applicants are subject to this rule, regardless if the applicant successfully passes or not.

(f) The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(g) At least one pesticide category test must be taken and successfully completed with a minimum score of 70% before a non-commercial pesticide applicator license may be obtained.

(h) The steps to re-certify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(i) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(j) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(k) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(5) Non-Commercial Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(6) Non-Commercial Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the pesticide applicator core test and each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted. A temporary pesticide applicator permit is not valid if only the pesticide applicator core test is successfully completed, and no additional pesticide category test is successfully completed.

(b) The pesticide applicator is responsible to verify their license is processed by the department.

(c) A non-commercial pesticide applicator license shall be issued when the following conditions have been met:

(i) an application form has been submitted to the department;

(ii) any fees have been paid;

(iii) the applicant is in good standing with the department;
and

(iv) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied

(d) The non-commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, which may include any combination of the unlawful acts given in Section R68-7-20.

(e) If an application for a non-commercial pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator is required to have their license in their immediate possession when making a pesticide application.

(g) If the pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must also be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(h) A new non-commercial pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Non-Commercial Pesticide Applicator License Recertification and Renewal.

(a) Each non-commercial pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Non-Commercial pesticide applicators must recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test(s) and successfully completing each required test with a minimum score of 70%; or

(ii) participate in approved CEUs and accumulate the required amount of 24 total CEU credits during the valid license time period. A minimum of two credits in law, six in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(8) Records Maintained. Non-Commercial applicators shall keep and maintain records of any restricted use pesticide applications.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) the name and address of the person for whom the restricted use pesticide is applied;

(ii) the address of the restricted use pesticide application location, if the pesticide application location differs from the location provided pursuant to R68-7-12(8)(b)(i);

(iii) the complete square footage of the area to be treated with restricted use pesticides;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date, including the month, day, and year when the restricted use pesticide was applied;

(vi) the brand name of the restricted use pesticides, EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the total amount of restricted use pesticides, including diluted or ready-to-use (RTU) pesticides, applied per application;

(viii) the purpose of the restricted use pesticide application, the pesticide target site, and pest to be treated; and

(ix) the name and non-commercial pesticide applicator license number of the certified non-commercial pesticide applicator who applied the pesticides.

(c) records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department, upon request.

(d) Records shall be furnished in a uniform format.

R68-7-13. Private Pesticide Applicators.

(1) Private Pesticide Applicator License Required.

(a) A private pesticide applicator license is required for applying restricted use pesticides on the owned, rented, or leased agricultural property of an individual. No person shall purchase, use, demonstrate the use of, or supervise the use of any restricted use pesticide without becoming certified and obtaining a private pesticide applicator license issued by the department. Each person performing the physical act of applying restricted use pesticides shall be eighteen years of age, or older, and possess a valid private pesticide applicator license, except:

(i) a person of at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family member, according to the family exemption of the EPA WPS, and only applies pesticides on the privately owned agricultural establishment of a certified pesticide applicator who is also an immediate family member; or

(ii) any person, eighteen years of age, or older, employed by, or working on, a privately owned, rented, or leased agricultural property who has been trained by an actively certified Utah pesticide applicator, or trainer that has successfully completed an EPA approved Train the Trainer course, and has been instructed on the requirements of the EPA WPS for pesticide handlers.

(b) A private pesticide applicator is considered as having each pesticide category on their license except for the Fumigation Pest Control and Aerial Application Pest Control categories. A private pesticide applicator shall successfully complete the respective pesticide applicator tests for the Fumigation Pest Control and Aerial Application Pest Control categories before applying any pesticides restricted by those categories.

(c) Issuance of a private pesticide applicator license shall be conditioned upon the applicant complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, and to prevent unreasonable injury to any person. A private pesticide applicator license certifies the applicator to give instructions on the EPA WPS to the workers and pesticide handlers of a private agricultural establishment.

(d) Private Pesticide Applicator Application and Fee Requirements. The fees for a private pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(i) Applications for a private pesticide applicator license shall be made on the approved department form and shall be submitted to the department along with the required fee. A license will only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to the CEU requirements.

(ii) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(2) Private Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant shall schedule required pesticide applicator tests with a testing center approved by the department.

(3) Private Pesticide Applicator Testing Procedures.

(a) A new applicant for a private pesticide license must be eighteen years of age, or older, and shall demonstrate competency

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and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved private pesticide applicator test and department application forms. Each pesticide applicator test shall be proctored at an approved testing center.

(b) An applicant for a private pesticide applicator license shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a private pesticide applicator license shall find a testing center from a list of approved testing centers on the department's website. A test may also be proctored by a local Utah State University Extension agent.

(d) An applicant for a private pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under this rule. Applicants are subject to this rule, regardless if the applicant successfully passes or not.

(f) The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(g) The private pesticide applicator test must be taken and successfully completed with a minimum score of 70% before a private pesticide applicator license may be obtained.

(h) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(i) The steps to re-certify solely by testing are the same as for an initial applicant. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(j) Upon the successful completion of the private pesticide applicator test, the applicant shall complete the department's completion form, and the department's pesticide applicator application form, online.

(k) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(l) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(4) Private Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(5) Emergency Use Permit. An individual may be able to acquire an Emergency Use Permit which allows a single individual, at a singular location, the permission to apply a restricted use pesticide in a situation determined to be an emergency by the department. Determination is at the sole discretion of the department. Any subsequent purchase of any restricted use pesticide, or additional pesticide application of any restricted use pesticide, or use of any restricted use pesticide by the individual obtaining the Emergency Use Permit is not allowed without the written consent of the department. This permit shall be issued only in an emergency as a substitute for a private pesticide applicator license.

(6) Private Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the private pesticide applicator test and each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(b) The pesticide applicator is responsible to verify their license is approved by the department.

(c) A private pesticide applicator license shall be issued when the following conditions have been met:

(i) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied;

(ii) any fees have been paid; and

(iii) the applicant is in good standing with the department.

(d) The private pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, as set forth in Section R68-7-20.

(e) If an application for a private pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator is required to have their license in their immediate possession when making a pesticide application.

(g) Duplicate licenses from the department are available for a fee as set forth in Subsection 4-2-103(2). The pesticide applicator shall also be in good standing with the department, and have no unresolved violations or fines, before a replacement license may be issued.

(h) A new private pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Private Pesticide Applicator License Recertification and Renewal.

(a) Each private pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Private pesticide applicators shall complete required recertifications before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test(s) and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulate the required amount of six total CEU credits during the valid license time period. A minimum of one credit in Law, one in Safety, and one in Pesticide Use are required, while any combination of the three categories may be used for the remaining three credits.

(8) Records Maintained. Private pesticide applicators shall keep and maintain records of any restricted use pesticide applications, and of any pesticide applications required by WPS.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) If the licensee is subject to WPS, the location of any pesticide applications, detailing the address, the metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(ii) If the licensee is not subject to the WPS, the location of any restricted use pesticide applications, detailing the address, the metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(iii) the complete size description of the pesticide application area, using either acres, square footage, section, or other legally descriptive and easily understandable terms common to the industry;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date of the pesticide application, including the month, day, and year when the restricted use pesticide was applied, and the pesticide application start and end times;

(vi) the pesticide product name, as it is written on the pesticide label, of the restricted use pesticides, the EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the active ingredient of the restricted use pesticide;

(viii) the total amount of restricted use pesticides, including diluted or RTU pesticides, applied per application;

(ix) the amount of restricted use pesticide used per acre or square feet;

(x) the purpose of the restricted use pesticide application, the pesticide target site, the pesticide target pest, and, if applicable, the crop to be treated;

(xi) the duration, or length of time, required for the restricted entry interval;

(xii) the name and pesticide applicator license number of the certified pesticide applicator who applied the pesticides, or who directly supervised the use of any restricted use pesticides; and

(xiii) the name of any individual who applied pesticides under the exemptions provided in Subsection R68-7-13(1)(a)(i) or Subsection R68-7-13(1)(a)(ii).

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be made available for inspection by the department, within 48 hours of a request.

(d) Pesticide application records provided by any commercial pesticide business to the agricultural establishment shall also be kept for two years, and will provide the same information required by Subsection R68-7-13(8).

(e) Records shall be kept recording the maintenance history of pesticide application equipment, any respirator medical information, respirator fit testing, and any other records required by the label of the product used or by EPA WPS.

(f) Records shall be kept in a uniform format.

R68-7-14. Other Individuals.

(1) Employees of Federal Agencies.

(a) Federal government employees requesting to be a pesticide applicator in Utah shall be required to certify as a non-commercial pesticide applicator by successfully passing the written pesticide applicator core test and any applicable pesticide category tests. Federal government employees who possess a valid and current pesticide applicator license from another state may be exempt, and a reciprocal pesticide applicator license may be issued.

(b) Any federal government agency with an EPA approved pesticide applicator certification plan that meets or exceeds the Utah pesticide applicator certification standards may qualify for reciprocal pesticide applicator certification in Utah.

(c) Federal government employees requesting reciprocal licensing status shall apply to the department and confirm that the application is approved prior to conducting any activities under this rule or Title 4, Chapter 14, Utah Pesticide Control Act.

(2) Certification of Out-of-State Applicants.

(a) An out-of-state pesticide applicator may apply as a Utah pesticide applicator by taking the applicable tests in their respective state. Out of state proctors shall be approved by the department and the pesticide applicator applicant shall bear the costs involved with out-of-state testing and licensing.

(b) If a pesticide applicator possesses a current and valid pesticide applicator certification from another state, and requests to apply pesticides in Utah, they shall complete the proper application process to the department, including:

(i) payment of any required fees;

(ii) a true copy of the applicant's credentials, both front and back, as proof of certification in the applicant's state of residence;

(iii) a front and back copy of their government issued identification; and

(iv) a letter of good standing, or other acceptable government documents, from the applicant's state pesticide licensing program, sent directly to the department by the licensing entity, specifically stating the applicant is in good standing and is currently licensed as a pesticide applicator in that state.

(c) The department may, upon review of the applicant's required credentials and other materials, issue a Utah Pesticide Applicator License to the applicant in accordance with the pesticide categories or pesticide use situations for which the applicant is certified in another state, without requiring testing.

(d) Out-of-state pesticide applicators who apply pesticides in Utah shall be subject to Utah law.

(3) Changes to License Information.

(a) Each certified commercial, non-commercial, and private pesticide applicator shall notify the department of any change to the pesticide applicator's name, address, phone number, email address, or change of employer within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(b) Each commercial pesticide business and RUP dealer shall notify the department of any changes including ownership, company name, owner or manager's name, company address, phone number, email address, or any other required information, within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(c) Business licenses are non-transferable, and in the case of a change of business ownership, a new application is required, along with the payment of any associated fees.

(i) The department shall determine if the name on the license may be retained by the new owner.

(ii) The department shall determine the necessary fees for a new license.

(iii) The new owner shall either qualify as the qualifying party or have an employee of the business that qualifies as a qualifying party. The qualifying party for the business must be an employee of the business as defined in Section 4-14-102, and not a contractor or third party. The qualifying party may not be the designated qualifying party, or employee, of another pesticide applicator business.

(d) The designated representative for a Pesticide Business License applicant shall meet the requirements of this section, including taking any applicable tests.

R68-7-15. Restricted Use Pesticide Dealer Licensing.

Restricted Use Pesticide Dealer License Required.

(1) It is unlawful for any person to act, represent, or advertise themselves as a restricted use pesticide dealer at any time without obtaining a restricted use pesticide dealer license.

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(a) A separate license is required for each individual business location in the state where restricted use pesticides are sold or distributed.

(b) Any manufacturer, registrant, or distributor who has no restricted use pesticide dealer business licensed within this state, and who distributes a restricted use pesticide directly into Utah, shall obtain a restricted use pesticide dealer license for their principal out-of-state business location.

(c) Any manufacturer, registrant, or distributor who sells only through, or to, a pesticide dealer, is not required to obtain a restricted use pesticide dealer license.

(2) Restricted Use Pesticide Dealer License Issuance. Applications for a restricted use pesticide dealer license shall be on the approved department form. The fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) The applicant shall certify on the application that the business understands and recognizes the rules concerning the sale of restricted use pesticides and the records that shall be kept and maintained for two years.

(b) The applicant shall take online training prior to the initial issuance of their license and with every renewal. If a new manager is hired, the manager shall take online training.

(b) If the department finds the applicant qualified to sell or distribute restricted use pesticides, and the applicant has paid any required licensing fees, the department may issue a Restricted Use Pesticide Dealer License. The Restricted Use Pesticide Dealer License shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, as set forth in Section R68-7-20.

(3) Restricted Use Pesticide Dealer License Renewal. Renewal fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504. If a restricted use pesticide dealer fails to complete and submit the necessary renewal forms and certifications to the department before the end of their license expiration date, a late fee may be assessed and added to the renewal fee, in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(4) Records Maintained. Each licensed restricted use pesticide dealer location shall keep a recording of any restricted use pesticide sales. This restricted use pesticide sales record shall be submitted to the department on the department's website, and shall contain the following information:

(a) the company name of the restricted use pesticide dealer;

(b) the store or location name of the restricted use pesticide dealer making the sale;

(c) the complete restricted use pesticide dealer license number;

(d) the expiration date of the certified pesticide applicator's certification or license;

(e) the categories in which the pesticide applicator is certified relevant to the pesticides sold;

(f) the complete date of the sale, including the month, day, and year;

(g) the first and last name of the individual who made the sale;

(h) the brand name of the restricted use pesticide sold, the complete EPA registration number of the restricted use pesticide, and the quantity sold;

(i) the restricted use pesticide product container size;

(j) the first and last name of the certified pesticide applicator who made the purchase;

(k) the complete pesticide applicator license number of the certified pesticide applicator who made the purchase; and

(l) the complete address and contact information of the certified pesticide applicator who made the purchase, including street name and house number, city, state, zip code, phone number, and email address.

(m) If the individual who purchased the restricted use pesticide was authorized by letter, the authorization letter shall be kept on file for a minimum of two years. The authorization letter shall contain the name, pesticide applicator license number, signature of the pesticide applicator who wrote the authorization letter, and the full name of the individual being authorized to purchase the restricted use pesticide. The authorization letter may only be used once per restricted use pesticide purchase. The restricted use pesticide dealer shall verify the information contained in the authorization letter, and shall verify the identity of the authorized individual by a government issued identification.

(n) If the individual who purchased the restricted use pesticide used a temporary pesticide applicator permit, a copy of the temporary pesticide applicator permit shall be kept on file for a minimum of two years.

(o) Records shall be kept for a period of two years from the date of the restricted use pesticide sale, and shall be made available for inspection by the department. The department, upon request and within two business days, shall be furnished a copy of any sales records completed by the restricted use pesticide dealer.

(5) Submission of Electronic records. On or before July 1 of each year, restricted use pesticide dealers are required to submit their restricted use pesticide sales records for the period starting the previous July 1 through June 30 of the current year.

(6) Exemption. Section R68-7-15 shall not apply to a certified pesticide applicator who sells restricted use pesticides only as an integral part of their commercial pesticide application business services when the pesticides are dispensed only through their equipment used for pesticide application.

(g) Restricted Use Pesticide Dealers Responsible for the Acts of Their Employees. Each restricted use pesticide dealer shall be responsible for the acts of each person under their employ in the solicitation and sale of restricted use pesticides, and any claims and recommendations for the use of restricted use pesticides. A restricted use pesticide dealer license may be subject to denial, suspension, or revocation for any violation of Title 4, Chapter 14, Utah Pesticide Control Act or rules promulgated thereunder, whether committed by the restricted use pesticide dealer or by the dealer's officer, agent, or employee.

R68-7-16. Responsibilities of Pesticide Applicator Businesses and Pesticide Applicators.

(1) Pesticide Applicator Business Duties and Responsibilities.

(a) A pesticide applicator business shall ensure the qualifying party of the business, as described in Section 4-14-111, receives the training the qualifying party requires to comply fully with state law, individual pesticide label restrictions, and any applicable labeling directions.

(b) Evidence of any pesticide training and attendance shall be recorded and kept on file, and shall include the name of the employee, their respective pesticide applicator license number, the pesticide topics and specific products covered, and the signatures of the trainees and the trainer. The agenda and copies of the pesticide training material shall be retained for two years after the termination of any employee.

(c) It is the business owner's responsibility to verify that each employed pesticide applicator is properly certified in the appropriate pesticide categories.

(d) Each pesticide service vehicle shall carry complete, appropriate, legible, and up-to-date labels for each pesticide applied directly from that pesticide service vehicle.

(i) Original labels are preferred, and it is prohibited to remove any label from any container still containing any pesticide concentrate.

(ii) If any pesticide labels are printed from an internet source, the revision number or date should be verified with the label on the container to ensure the correct version is used.

(iii) Electronic copies of labels are not acceptable.

(2) Responsibilities of the pesticide business and employees.

(a) A pesticide business, their qualifying party, or their pesticide applicator may be held responsible for the acts or omissions of an employee of the pesticide business. It is the responsibility of the pesticide business to properly train, equip, and prepare their employees, and to maintain records of employee training and equipment.

(b) Failure to respond to or fully disclose information pursuant to any requests by the department within two business days, for information relating to the training and equipment of a pesticide business and their employees shall be evidence of a failure to properly train or equip. The pesticide business owner, qualifying party, or designated pesticide business supervisor has the burden of proof by a preponderance of the evidence that the pesticide business, qualifying party, or pesticide business employee has fulfilled the required duties as prescribed by this rule or a written order of the department.

(3) Use of pesticide business name and license number.

(a) A pesticide business shall prominently display the pesticide business license issued by the department at the primary pesticide business office and at each branch office.

(b) In addition to the requirements of Subsection R68-7-16(3)(a), a pesticide business shall prominently display the pesticide business name and corresponding license number, as recorded on the license issued by the department, on:

(i) customer proposals or contracts that include pest management services;

(ii) service records and service notifications; and

(iii) pesticide business service vehicles and trailers used in providing pest management services.

(c) Pesticide business names and corresponding license numbers displayed on a pesticide business service vehicle or trailer used in providing pest management services shall conform to the following:

(i) are affixed to the service vehicle or trailer used in providing pest management services within 30 days after the department issues the license, or issues a business license change, or after the service vehicle or trailer is acquired, whichever is sooner;

(ii) are in a color that contrasts with the color of the service vehicle and trailer;

(iii) are prominently displayed on both sides of the service vehicle or trailer;

(iv) use at least two-inch letters for the principal words in the pesticide business name and at least one and one-half inch letters for other words in the pesticide business name;

(v) use at least two-inch numbers for the pesticide business license number; and

(vi) use letters and numbers that are weatherproof.

(d) A pesticide business that always uses a pesticide business service vehicle and trailer together is required to only mark either the service vehicle or trailer as described in Subsection R68-7-16(3)(c). A pesticide business that uses a vehicle only for sales, solicitations, or solely for inspections, and does not carry a pesticide or pesticide application equipment, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in Subsection R68-7-16(3)(c).

(e) When complying with Subsection R68-7-16(3)(c), a pesticide business may use a slogan, trade name, or trade mark in addition to the pesticide business name and corresponding license number. When complying with Subsection R68-7-16(3)(c), a pesticide business may use a word or phrase to indicate its formerly licensed pesticide business name, if it had a formerly licensed pesticide business name.

(4) Pesticide Application Notification.

(a) Prior to the time of each application of a restricted use pesticide with a Danger or Danger-Poison signal word, the certified commercial pesticide applicator, or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

(i) the pesticide business name, pesticide business license number, and telephone number;

(ii) the name and pesticide applicator license number of the licensed pesticide applicator who will make the application;

(iii) the date and time of the pesticide application;

(iv) the type of pesticide application service and brand name and EPA registration number of pesticides applied; and

(v) instructions to the customer to contact the pesticide business telephone number if more specific information is desired regarding the pesticide product applied.

(b) The written statement required in Subsection R68-7-16(4)(a) shall be provided to the customer by any of the following means:

(i) leave statement at the residence;

(ii) in the case of a multi-unit residence, leave the statement with the property manager or their authorized representative; or

(iii) mail to the property manager or their authorized representative if management is located at a location other than the pesticide application site, at least seven calendar days prior to the date of the pesticide application.

R68-7-17. Termiticide Record Keeping: Additional Requirements.

(1) In addition to the recordkeeping requirements contained in Section R68-7-12, any pesticide applicator shall retain a record of a diagram of the structure treated for termites with termiticide that includes the dimensions of the structure, including the depth to the footer that the foundation rests upon.

(2) For post construction pesticide treatments, the diagram shall also illustrate the area where termites or termite activity was found.

(3) Any records of pesticide applications shall be maintained for a period of two years and organized separately for each individual structure.

(4) If a termiticide distribution system is used:

(a) the system shall meet the standards listed on the label and the use of the system shall be allowed only as stated on the label; and

(b) installation, design, and manufacture of the system shall be allowed by the termiticide label and manufacturer. If no

mention of a system is on the label, a distribution application system shall not be used.

R68-7-18. Minimum Standards for Fumigant Applications.

(1) Application of fumigant products require strict adherence to the label, and when required by the label, a verified and written Fumigation Management Plan (FMP) shall be prepared in advance of treatment. An FMP shall provide details regarding the information prescribed by the label. Utah standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(a) at least two persons present at the time of releasing the fumigant and during the initial ventilation, one of whom shall be a certified pesticide applicator with the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any other person;

(b) notification of local fire department or first responder prior to fumigation of any building or enclosed space, other than a fumigating vault, the with the address of the fumigation job, time of gas release, kind of gas to be used, and the beginning time of the aeration of the premises.

(c) Premises sealed. Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(d) Inspection of premises prior to releasing fumigant. Immediately before releasing the fumigant, the certified pesticide applicator shall conduct a thorough inspection of the premises to verify that no person or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.

(e) Fumigation of apartments within a multiple unit apartment building.

(i) Fumigation of apartments within a multiple unit apartment building may be fumigated only after the apartments are vacated and the area to be fumigated is properly sealed.

(ii) The adjacent units shall be properly ventilated during the entire exposure period.

(f) Notification of dwellings or places of business within 100 feet of the building being fumigated.

(i) Dwellings or places of business within 100 feet of the building being fumigated shall be notified in writing in advance of the fumigation.

(ii) Premises within 10 feet shall be vacated during the fumigation and aeration periods.

(g) Warning signs.

(i) Warning signs shall be posted conspicuously at entrances of the premises to be fumigated and at the entrances of adjacent multiple units and structures within ten feet and kept there during the entire fumigation and ventilation period. Signs shall be in a bright and conspicuous color with a minimum size of 8 1/2 inches by 11 inches, bearing the word "poison", displaying the skull and crossbones, the name of the fumigant used, and the name, address, and telephone number of the certified pesticide applicator.

(ii) Before the fumigant is released, entrances leading directly to the fumigated space shall be closed, sealed, and locked, except exits to be used by the fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(h) Masks worn.

(i) Each member of the fumigating crew shall be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety,

and Health Administration with the correct canister for the type of gas used.

(ii) Masks shall be worn while in the enclosed space during and after release of the fumigant, and until initial ventilation is completed.

(i) Re-entering fumigated premises.

(i) No one other than the certified pesticide applicator shall be permitted to re-enter the fumigated premises until the certified pesticide applicator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.

(ii) Aeration shall be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(i) Subsections R68-7-18(1)(a) through R68-7-18(1)(i) may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions shall be adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the certified pesticide applicator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(2) Fumigation of burrowing rodents requires strict adherence to the label as well as a Fumigation Management Plan (FMP) that shall contain the following information:

(a) the purpose of the pesticide application indicating the exact pest to be controlled, and the type of burrow system to be treated;

(b) the pesticide used, stating the name of the pesticide, the EPA registration number, and dosage used;

(c) the property treated information recording the property or facility name and address, and verifying the manager's or property owner's name and contact information;

(d) the certified pesticide applicator information recording the certified pesticide applicator's name, company, pesticide applicator license number, phone numbers, and verifying with valid government issued identification;

(e) any emergency agency contact information, recording the phone numbers for the nearest hospital, fire department, police department, poison control center, and the registrant of the fumigant; and

(f) instructions given to personnel, verifying by written signatures that personnel have been instructed to:

(i) report any accident or incident related to exposure, provide a telephone number for emergency response reporting;

(ii) report to the proper authorities any theft of fumigant or equipment related to fumigation; and

(iii) follow label directions, paying particular attention to the Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions portions of the label instructions.

(g) Burrowing Rodent Fumigation Record Keeping: Additional Standards. In addition to the recordkeeping requirements contained in Section R68-7-12, the applicator shall keep as part of the record a scaled diagram of the property treated that includes dimensions of the property, any structures present, and mark each burrow treated on the diagram.

R68-7-19. Transportation, Storage, Handling, Usage, and Disposal of Pesticides and Pesticide Containers.

Any pesticide applying person shall provide a secure pesticide and device storage area. The storage area may include an area on a service vehicle. Any pesticide applying entities shall also have, at a minimum, a pesticide spill kit in each pesticide service vehicle, pesticide service trailer, and at each pesticide business location.

(1) No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, other non-target species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale or transported, and shall be handled or disposed of in a manner that would not damage or injure humans, other non-target species, or the environment. Pesticides with obscured, illegible, or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container, and the registered pesticide label is affixed to the container.

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife, except that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application and shall use appropriately functioning devices and procedures to prevent back siphoning.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting or adjacent to schools in session, hospitals, nursing homes, or other similar establishments, when occupied, under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if physical drift or volatilization may cause damage to adjacent land, injure humans or other species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Pesticides and their containers shall be maintained in accordance with generally accepted industry standards and practices.

(b) The provisions of Subsection 68-7-19(10)(d) and (e) and Subsection 68-7-19(11) shall not apply to empty pesticide containers once decontaminated.

(c) For the purposes of Subsection 68-7-19(10)(d) and (e) and Subsection 68-7-19(11), pesticides and their containers at the loading area shall not be considered unattended if the operator

maintains either visual control or repeatedly returns at closely spaced intervals to ensure safe monitoring of the pesticides and containers.

(d) Unattended pesticides labeled with the signal word "danger/poison" and their containers shall be constructed, stored and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison", pesticides labeled with the signal word "warning", pesticides labeled with the signal word "caution", and their containers, shall be stored in secured storage, out of the reach of children, in an enclosure as described in Subsection 68-7-19(10)(d). Metal containers, twenty-eight gallons and larger, with tight screw-type bungs or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two-inch tall letters.

(b) Warning signs shall be posted:

(i) at each entrance or exit from a storage area and on each exterior wall, so that the sign is visible from any direction; and

(ii) if the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) Each service vehicle and business location operated by a commercial pesticide business that carries, transports, or stores any measurable amount of pesticide concentrate or mixed pesticide solution must have, at minimum, a spill kit containing:

(a) a dustproof five-gallon bucket with a lid;

(b) waterproof gloves;

(c) three spill socks, each approximately three feet by four inches;

(d) ten medium weight absorbent pads, each approximately 15"x18"; and

(e) one medium weight trash bag to contain used absorbent material.

R68-7-20. Unlawful Acts.

Any person who has committed any of the following acts is in violation of Title 4, Chapter 14, Utah Pesticide Control Act, or rules promulgated thereunder, and is subject to the penalties provided in Section 4-2-301 through Section 4-2-305:

(1) been convicted under Section 14(b) of FIFRA;

(2) been subject to a final order imposing a civil penalty under Section 14(a) of FIFRA;

(3) been found in violation of a final state enforcement action for violations of state law;

(4) made false, fictitious, or fraudulent claims, including any written or spoken misrepresentation of the use or effect of pesticides, the certification of any pesticide applicator, or the methods or manner in which pesticides may be applied or utilized;

(5) applied any known ineffective or improper pesticides;

(6) applied any pesticides in a faulty, careless, or negligent manner;

(7) failed to comply with the provisions of Title 4, Chapter 14, Utah Pesticide Control Act, these rules, or any lawful order of the department;

(8) failure to keep or maintain records required by these rules, or to make reports when and as required, or to notify the

NOTICES OF PROPOSED RULES

department within 30 days of any changes required under Section R68-7-4

(9) proffered false or fraudulent records, invoices, or reports to the department;

(10) engaged in the business, solicitation, advertisement, or representation of applying a pesticide for hire or compensation on the lands or property of another without having a valid commercial pesticide applicator license;

(11) purchased, used, or supervised the use of, a pesticide which is labeled for restricted use without having qualified as a certified pesticide applicator;

(12) used fraud, deceit, or misrepresentation in any portion of the application process for, or renewal of, a registration, license, permit, or certification with the department;

(13) refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(14) used, or caused to be used, any pesticide in a manner inconsistent with its labeling or rules of the department, if those rules further restrict the uses provided on the labeling;

(15) impersonated any federal, state, county, or other government official;

(16) distributed any pesticide labeled for restricted use to any person unless that person or their agent: has a valid pesticide applicator license, permit to use or supervise the use of, or distribute a restricted use pesticide;

(17) applied any pesticides on or in any building, structure, or property without the consent of the owner, manager, or responsible party, with the exception of any government agency that applies a pesticide to abate a public health problem under the direction of the department;

(18) for a pesticide applicator, applied a termiticide at less than the label rate;

(19) for an employer of a commercial or non-commercial pesticide applicator, to allow an employee to apply pesticide before that individual has successfully completed the required pesticide applicator certification process;

(20) a certified pesticide applicator failed to possess a current pesticide applicator license on their person during a pesticide application;

(21) allowed a pesticide application to run off, or drift, from the target pesticide application area, whether or not damage or injury occurred;

(22) failed to register a pesticide business with the department, or follow the rules set forth in this rule for the licensing of a commercial pesticide business;

(23) handled or applied any pesticide for which a person does not have an appropriate, complete, legible, and current label at hand or affixed to the pesticide;

(24) Failed to comply with the federal pesticide container and containment regulations found in 40 CFR 156 and 165;

(25) Failed to perform fumigation applications according to the standards required by this rule;

(26) Failed to display the pesticide business license name and pesticide business license number in accordance with this rule;

(27) Failed to notify a customer of the application of a restricted use pesticide and the information detailed in Section R68-7-16;

(28) The qualifying party of a commercial pesticide business licensee failed to train or prepare a commercial pesticide applicator to comply fully with the following;

(a) any Utah pesticide statute;

(b) any Utah pesticide rule;

(c) any pesticide label;

(d) any pesticide labeling directions; and

(e) any equipment they will be using.

(29) Failure to timely and fully respond to requests by the department for information relating to training and equipping of pesticide applicators;

(30) transported, stored, handled, used, or disposed of a pesticide or pesticides container that is inconsistent with this rule;

(31) cheated on any pesticide test required by the department or otherwise failed to comply with testing requirements;

(32) refused or neglected to change contact and employment information within 30 days.;

(33) violated the EPA WPS; or

(34) misrepresented or made deceptive claims regarding pesticides and the use of the word or term "organic". This includes terms, claims, and non-numerical or comparative statements that cannot be well defined, and may be misconstrued by consumers as a health or safety claim. These terms are prohibited in any form. This includes language such as:

(a) "organic", "natural", "all-natural", "pesticide-free", "chemical-free", "trusted", "safe", "nonpoisonous", "non-injurious", "harmless", or "nontoxic" to humans and pets; and

(b) any similar language that infers a health or safety claim.

(c) The only exceptions to this unlawful act are: "For Organic Production", "For Organic Gardening", "For Organic Lawn Care", "For Use in Organic Production", and "Safe when used as directed". These exemptions are only valid if the language can be found on the department or EPA approved label.

R68-7-21. Penalty Matrix.

In the disposition of administrative cases, the department shall use a penalty matrix to determine appropriate penalties. The penalty amount shall be from \$50-500 per violation. The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effects at the time of the incident giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted or there are aggravating or mitigating factors present.

(1) The department may also choose to issue a warning, in lieu of penalty, where the penalty matrix allows. Any warning in lieu of penalty shall be issued in the department's sole discretion.

(2) The department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include the following:

(a) the number of separate alleged violations for a given inspection or incident date;

(b) the magnitude of the harm, or potential harm, including quantity or degree, to humans, non-target species, property, or the environment caused by the violation;

(c) the similarity of the current alleged violation to violations committed by the pesticide applicator or business; and

(d) the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(3) The department will review past violation trends and update the penalty matrix based on compliance history annually. A copy of the penalty matrix shall be made available from the department upon request.

KEY: inspections, pesticides

Date of Enactment or Last Substantive Amendment: ~~June 21, 2011~~2021

Notice of Continuation: February 3, 2021
 Authorizing, and Implemented or Interpreted Law: 4-14-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-317	Filing No. TBD*

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-317. Incentives for National Board Certification
3. Purpose of the new rule or reason for the change:
The rule is being amended to update the application window for national board certification to expand the time for applying.
4. Summary of the new rule or change:
The date changed for accepting applications from July 1 through January 31 annually, rather than through December 1.
(*EDITOR'S NOTE: Due to a glitch in the eRules filing system, this filing could not be filed in the normal manner and had to be sent over email. It was received in time and in proper order to be published in this issue, June 1, 2021, of the Bulletin. As soon as the problem is fixed, it will be put in the system so it is recorded and an ID number will be assigned. An Editor's Note will be published as soon as this happens.)

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have significant fiscal impact on state government revenues or expenditures. Expanding the application window should not meaningfully impact current procedure.
B) Local governments:
This rule change is not expected to have significant fiscal impact on local governments' revenues or expenditures. Expanding the application window should not meaningfully impact current procedure.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have significant fiscal impacts on small businesses' revenues or expenditures. Expanding the application window should not meaningfully impact current procedure.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Expanding the application window should not meaningfully impact current procedure.
F) Compliance costs for affected persons:
There are no significant compliance costs for affected persons. Expanding the application window should not meaningfully impact current procedure.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

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

rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53F-2-523	Section 53F-5-202
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: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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**R277. Education, Administration.
R277-317. Incentives for National Board Certification.
R277-317-1. 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) Section 53F-5-202, which requires the Board to make rules to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification; and

(d) Section 53F-2-52[+]3, which requires the Board to implement a salary supplement for National Board-certified teachers.

(2) The purpose of this rule is to specify procedures and timelines for:

(a) reimbursements to educators under Section 53F-5-202; and

(b) applications for the salary supplement under Section 53F-2-52[+]3.

R277-317-2. Definitions.

(1) "Eligible educator" means an educator who holds a current National Board certification attained or renewed:

(a) after July 1, 2016; and

(b) while employed as an educator by an LEA in Utah.

(2) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "National Board certification" means the same as that term is defined in Section 53E-6-102.

(4) "National Board-certified teacher" or "board-certified teacher" has the same meaning as defined in Subsection 53F-2-52[+]3(1)(b).

R277-317-3. Salary Supplement for National Board-Certified Teachers.

(1) The Superintendent shall allocate funds for salary supplements to board-certified teachers in accordance with Subsection 53F-2-52[+]3(3).

(2) The Superintendent shall maintain an online application system for board-certified teachers and make it available to educators no later than October 1 each school year.

(3) An applicant for the Board-certified salary supplement shall apply to the Superintendent by April 30.

(4)(a) If an applicant is denied funds under this rule, the applicant may submit a written appeal to the Superintendent prior to June 1.

(b) An appeal under Subsection (4)(a) is limited to the following issues:

(i) whether the applicant is a board-certified teacher;

(ii) whether the applicant was assigned to teach at a Title I school during the school year at issue; or

(iii) whether the Superintendent's initial denial was inconsistent with Section 53F-2-52[+]3 or this Rule R277-317; or

(iv) whether the Superintendent's initial denial was based on inaccurate or missing information.

(c) The Superintendent may designate a panel of at least two Board staff members to review an appeal made under Subsection (4)(a) and make a recommendation to the Superintendent.

(i) A panel designated in accordance with Subsection (5)(c) shall make a recommendation in accordance with the provisions of Section 53F-2-504 or this Rule R277-318.

(ii) The panel shall make a recommendation on an appeal within 30 days of receipt of the written appeal.

(5) The Superintendent shall issue a ruling on an appeal within 15 days of receipt of the panel's recommendation.

(6) The decision of the Superintendent on an appeal is the final Board administrative action.

R277-317-4. Grants for National Board Certification.

(1) The Superintendent shall establish and maintain an online application system through which an educator may apply for a grant to pay for fees and costs to pursue or renew a National Board certification.

(2) An applicant for a grant under Subsection (1) shall pay a registration fee to the National Board for Professional Teaching Standards or "NBPTS" prior to submitting the application.

(3) The Superintendent shall pay a grant under Subsection (1) directly to NBPTS.

(4)(a) To receive a grant under Subsection (1), an educator shall submit an application through the application system, including all information required by Section 53F-5-202.

(b) The Superintendent shall accept applications from July 1 through ~~December 1~~ January 31 annually.

(c) The Superintendent shall establish an expedited process for educators seeking to begin the National Board certification program in 2020.

(5) The Superintendent may not award a grant under this Section to an educator with a currently suspended license.

(6)(a) The Superintendent shall annually determine the number of new grant awards available based on:

(i) legislative appropriations;

(ii) estimated costs under Section R277-317-3;

(iii) encumbered costs for grants previously awarded under this section; and

(iv) costs associated with obtaining national board certification.

(b) The Superintendent shall publish the number of new grants available by October 15 annually.

(c) If the number of applicants exceeds the number of available grant awards, the Superintendent shall randomly choose grant recipients from all complete applications.

(7) In order for an educator to receive a grant under this section, the Superintendent shall require the educator to attest that the educator will not accept payment of National Board certification costs covered under the grant from any other party.

(8) A grant recipient shall notify the superintendent as soon as possible if:

(a) the individual discontinues pursuit of national board certification;

(b) the individual becomes ineligible to receive a grant under this section;

(c) the individual becomes ineligible to pursue national board certification under rules established by the National Board for Professional Teaching Standards; or

(d) the individual requests approval for an amendment to the individual's application plan.

KEY: national board certification, grants, salary supplements
Date of Enactment or Last Substantive Amendment:
2021~~November 8, 2019~~

Authorizing, and Implemented or Interpreted Law: Art X Sec 3;
53E-3-401(4); 53F-5-202; 53F-2-52[+]3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-320	Filing No. 53545

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-320. Grow Your Own Teacher and School Counselor Pipeline Program
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to establish requirements for administration of the grant program.
4. Summary of the new rule or change:
H.B. 381, passed in the 2021 General Session, creates the Grow Your Own Teacher and School Counselor Pipeline Program (program) to provide scholarships to certain school employees to become educators and school counselors; establishes eligibility criteria and allowed uses for the program, and requires the State Board of Education to make rules and administer the program.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments are due to H.B. 381 (2021).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments are due to H.B. 381 (2021).
C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments are due to H.B. 381 (2021).

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are due to H.B. 381 (2021).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendments in the rule change are due to H.B. 381 (2021).

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53F-5-218	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: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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R277. Education, Administration.

R277-320. Grow Your Own Teacher and School Counselor Pipeline Program.

R277-320-1. 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 53F-5-218, which directs the Board to make rules to implement the Grow Your Own Teacher and School Counselor Pipeline Program.
- (2) The purpose of this rule is to establish requirements for administration of the grant program.

R277-320-2. Definitions.

- (1) "Grant program" means the Grow Your Own Teacher and School Counselor Pipeline Program established in Section 53F-5-218.
- (2) "High leverage" means critical instructional practices that research has demonstrated can impact student achievement and be used across different content areas and grade levels, including:
 - (a) collective efficacy;
 - (b) student engagement;
 - (c) systematically designed instruction;
 - (d) feedback; and
 - (e) learning environment.
- (3) "Mentor" means a teacher or school counselor selected in consultation with a candidate's principal who:
 - (a) has a professional educator license and license area in the field for which the educator is mentoring;

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(b) has no less than three years full-time experience in the appropriate license area;

(c) has effective or highly effective evaluations in accordance with Rule R277-533;

(d) has proven successful in positively improving student outcomes, which may include:

(i) for a mentor teacher, better than the statewide average student growth or performance on statewide assessments, where applicable; or

(ii) for a mentor counselor, students who meet or exceed performance goals, outlined in school counseling program action research plans or data projects;

(e) follows all applicable supervision and mentoring requirements from a candidate's educator preparation program and Rule R277-308; and

(f) for a mentor teacher;

(i) models the use of high leverage teaching practices that meet the needs of diverse learners;

(ii) demonstrates content and grade level expertise; and

(iii) effectively collaborates with colleagues, families, and the broader community.

(4) "Regional Education Service Agency or "RESA" has the same meaning as the term is defined in Section 53G-4-410.

(5) "Statewide assessment" means an assessment described in Subsection 53G-6-803(9)(a).

R277-320-3. Program Administration.

(1) The Superintendent shall prepare an application for participation in the grant program and post the application on the Board website by April 20, 2021 for the first cohort of applicants.

(2)(a) An LEA shall submit an application to the Superintendent by the third Monday in May annually.

(b) A RESA may submit an application on behalf of one or more of its member LEAs.

(3) The Superintendent shall determine awards under the grant program taking into consideration the number of applicants for grant program funds in each cohort and subject to the following:

(a) The Superintendent may allocate funds to an LEA or RESA annually as follows, subject to Subsection 53F-5-218(6)(a):

(i) up to \$12,000 for a candidate in an undergraduate program; and

(ii) up to \$14,000 for a candidate in a graduate program;

(b) The Superintendent may annually allocate FTE costs up to \$9000 per candidate per eligible semester subject to the internship limits established in Subsection 53F-5-218(6)(c);

(c) The Superintendent may award mentor stipends as follows:

(i) \$500 for mentors serving 1-2 candidates;

(ii) \$750 for mentors serving 3-4 candidates; and

(iii) \$1,000 for mentors serving 5 candidates; and

(d) The Superintendent may annually allocate up to \$150,000 for RESA administrative costs.

(5) An LEA applicant shall provide documentation of efforts by each candidate to maximize financial aid opportunities and programs, including the Free Application for Federal Student Aid.

(6) The Superintendent shall disburse approved funds to an LEA by July 1 annually.

(7) The Superintendent shall monitor LEA expenditures of program funds consistent with Rule R277-113;

(a) to ensure compliance with Section 53F-5-218 and this rule; and

(b) to collect data required for performance measures and required legislative reporting.

(8) An LEA shall maintain documentation of information required in Subsection (7) consistent with Rule R277-113.

(9) The Superintendent may reallocate any funds not expended by an LEA by the end of the fiscal year in which the funds were disbursed.

R277-320-4. Candidate Learning Pathways.

(1) A grant program candidate's educator preparation pathway:

(a) shall result in a Utah professional educator license in accordance with Rule R277-303 and Section R277-306-6;

(b) shall provide courses outside of the candidate's LEA work hours;

(c) shall incorporate opportunities, where available, for candidates to demonstrate competency in lieu of course completion, assignments, and other preparation requirements for the institution and;

(d) may not require qualifying exams or prerequisites for program admission.

(2) A majority of a grant program candidate's clinical experiences, required by the candidate's educator preparation program, shall be at the site of the candidate's school of employment.

KEY: school counselor program, grant program

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4), 53F-5-218

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-404	Filing No. 53546

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-404. Requirements for Assessments of Student Achievement

3. Purpose of the new rule or reason for the change:
Board Rule R277-404 requires an annual review and approval to update the effective date of the Standard Test Administration and Testing Ethics Policy referenced within Section R277-404-3.
4. Summary of the new rule or change:
The policy language was added under Subsection R277-404-3(1)(c) "direction to reference the formative tools' guidance documentation." In addition, there was a section included within the policy, "Formative Assessment Tools" which needs to also be added to the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have significant fiscal impact on state government revenues or expenditures. The amendments should not meaningfully change current procedures because they reflect current practices within the field.
B) Local governments:
This rule change is not expected to have significant fiscal impact on local governments' revenues or expenditures. The amendments should not meaningfully change current procedures because they reflect current practices within the field.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have significant fiscal impact on small businesses' revenues or expenditures. The amendments should not meaningfully change current procedures because they reflect current practices within the field.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments should not meaningfully change current procedures because they reflect current practices within the field.

F) Compliance costs for affected persons:
There are no significant compliance costs for affected persons. The amendments to this rule should not meaningfully change current procedures because they reflect current practices within the field.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The department head of Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53F-5-218	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: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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R277. Education, Administration.

R277-404. Requirements for Assessments of Student Achievement.

R277-404-1. 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) Section 53E-4-302, which directs the Board to adopt rules for the administration of statewide assessments; and
 - (d) Subsection 53G-6-803(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments.
- (2) The purpose of this rule is to:
 - (a) provide consistent definitions; and
 - (b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark assessment" means the Board approved literacy or mathematics assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.

(2) "Benchmark mathematics assessment" means the Board approved mathematics assessment administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.

~~(2)~~(3) "College readiness assessment" means the:

- (a) same as that term is described in Section 53E-4-305; and
- (b) the ACT.

~~(3)~~(4) "English Learner" or "EL student" means a student who is learning in English as a second language.

~~(4)~~(5) "English language proficiency assessment" means the WIDA Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

~~(5)~~(6) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

~~(6)~~(7) "High school assessment":

- (a) means the same as that term is described in Section 53E-4-304;

(b) means the "Utah Aspire Plus"; and

(c) includes the Utah Aspire Plus assessment of proficiency

in:

- (i) English;
- (ii) math;
- (iii) science; and
- (iv) reading.

~~(7)~~(8) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

~~(8)~~(9) "Statewide assessment" means an assessment described in Subsection 53G-6-803(9)(a).

~~(9)~~(10) "Standards Assessment":

(a) means the same as that term is described in Subsection 53E-4-303(2)(a); and

(b) means the "Readiness Improvement Success Empowerment" or "RISE";

(c) for each school year, includes one writing prompt from the writing portion of the RISE English language arts assessment for grades 5 and 8.

~~(10)~~(11) "Statewide assessment" means the:

(a) the same as that term is defined in Subsection 53E-4-301(2);

(b) Utah alternate assessment; and

(c) English language proficiency assessment.

~~(11)~~(12) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

~~(12)~~(13)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means, for English language arts, science and mathematics, the Dynamic Learning Maps (DLM).

~~(13)~~(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, ~~June 4, 2020~~ May 6, 2021, which establishes:

(a) the purpose of testing;

(b) the statewide assessments to which the policy applies;

(c) direction to reference the formative tools' guidance documentation;

~~(d)~~(d) teaching practices before assessment occurs;

~~(e)~~(e) required procedures for after an assessment is complete and for providing assessment results;

~~(f)~~(f) unethical practices;

~~(g)~~(g) accountability for ethical test administration;

~~(h)~~(h) procedures related to testing ethics violations; and

~~(i)~~(i) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) <https://schools.utah.gov/assessment?mid=1104&tid=4> and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-4. Superintendent Responsibilities.

(1) The Superintendent shall facilitate:

(a) administration of statewide assessments; and

(b) participation in NAEP, in accordance with Subsection 53E-4-302(1)(b).

(2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.

(3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.

(1)(a) Except as provided in Section (1)(b) and R277-404-7 an LEA shall administer statewide assessments to all students enrolled in the grade level or course to which the assessment applies.

(b) A student's IEP team, English Learner team, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

(2) An LEA shall develop a plan to administer statewide assessments.

(3) The plan shall include:

(a) the dates that the LEA will administer each statewide assessment;

(b) professional development for an educator to fully implement the assessment system;

(c) training for an educator, appropriate paraprofessional, or third party proctor in the requirements of assessment administration ethics; and

(d) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.

(4) An LEA shall submit the plan to the Superintendent by September 15 annually.

(5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators, including third party proctors, concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.

(6) LEA assessment staff or third party proctor staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(7) An LEA may not release statewide assessment data publicly until authorized to do so by the Superintendent.

(8) An LEA educator, third party proctor, or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.

(9) An LEA educator, third party proctor, or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(10)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

R277-404-6. School Responsibilities.

(1) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

- (a) based on a student's score on a statewide assessment; or
- (b) because the student was exempted from taking a statewide assessment.

(2) An LEA and school shall require an educator, assessment administrator, and proctor, including a third party proctor, to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) A parent is primarily responsible for a child's education and has the constitutional right to determine which aspects of public education the child participates in, including assessment systems.

(b) Parents may further exercise their inherent rights to exempt their children from a statewide assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a statewide assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a statewide assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53E-4-205 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53E-4-205(2), and may not graduate without successfully completing the requirements of Sections 53E-4-205 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a statewide assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a statewide assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a statewide assessment.

(6) The administration of any assessment that is not a statewide assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not provide a nonacademic reward to a student for a student's participation in or performance on a statewide assessment.

(9) An LEA shall allow an educator to provide an academic incentive for a student's performance on a statewide assessment in accordance with Subsections 53E-4-303(4)(b), 304(3), and 305(4).

(10) An LEA shall ensure that a student who has been exempted from participating in a statewide assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(11) An LEA may allow a student who has been exempted from participating in a statewide assessment under this section to be physically present in the room during test administration.

R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(b) fail to administer a statewide assessment;

(c) fail to administer a statewide assessment within the designated assessment window;

(d) submit falsified data;

(e) allow a student to copy, reproduce, or photograph an assessment item or component; or

(f) knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.

(2) A school employee or third party proctor shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-215.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Subsection 63G-2-305(5), until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator, third party proctor, or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

R277-404-9. Data Exchanges.

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Beginning with the 2021-2022 school year and consistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

KEY: assessments, student achievements

Date of Enactment or Last Substantive Amendment: 2021 [August 24, 2020]

Notice of Continuation: November 29, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-4-302; 53E-3-401(4); 53G-6-803(9)(b)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-477	Filing No. 53547

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program
3. Purpose of the new rule or reason for the change:
The rule is being amended due to the changes outlined in H.B. 222, passed in the 2021 General Session.
4. Summary of the new rule or change:
The changes update reporting requirements to work with the School Children's Trust's new website and make additional updates in requirements for oversight of School LAND trust funds; such as, clarify the approval role of the authorizing entity for a charter school, and define a sample for review of Final Reports.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments are due to H.B. 222 (2021).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments are due to H.B. 222 (2021).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments are due to H.B. 222 (2021).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are due to H.B. 222 (2021).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendments in the rule change are due to H.B. 222 (2021).

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53D-2-202	Subsection 53F-2-404(2)(d)
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: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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R277. Education, Administration.

R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program.

R277-477-1. 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 53F-2-404(2)(d), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; 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) In accordance with Section 53D-2-202, through representation on the Land Trusts Protection and Advocacy Committee, the Board exercises trust oversight of:
 - (a) the Common School Trust;
 - (b) the School for the Deaf Trust; and
 - (c) the School for the Blind Trust.
- (3) The Board implements the School LAND Trust [P]program and provides oversight, support, and training for school community councils and Charter Trust Land Councils consistent with S[ubs]ection 53G-7-1206[~~(2)~~], Rule R277-491, and this Rule R277-477.
- (4) The purpose of this rule is to:
 - (a) provide financial resources to a public school to implement a component of a school's Teacher and Student Success Plan in order to enhance and improve student academic achievement;
 - (b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust [P]program funds allocated to the school;
 - (c) provide direction in the distribution of funds from the Trust Distribution Account, as funded in Section 53F-2-404;
 - (d) provide for appropriate and adequate oversight of the expenditure and use of funds by ~~[a designated local board of education,]~~ an approving entity, school administration, and the Board;
 - (e) provide for proper allocation of funds as stated in Section 53F-2-404, and the appropriate and timely distribution of the funds;
 - (f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

(g) define the roles, duties, and responsibilities of the Superintendent with regards to the School Children's Trust.

R277-477-2. Definitions.

- (1) "Approving entity" means ~~[an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school]~~ a school district board or a charter authorizer consistent with Section 53G-7-1206.
- (2)(a) "Charter trust land council" means a council comprised of a two person majority of ~~[elected]~~ parents or grandparents of students attending the charter school, elected by parents of students attending the charter school, convened to act in lieu of the school community council for the charter school.
- (b) "Charter trust land council" includes a charter school governing board if:
 - (i) the charter governing board meets the two-parent majority requirement; and
 - (ii) the charter school governing board chooses to serve as the charter trust land council.
- (3) "Council" means a school community council or a charter trust land council.
- (4) "Digital citizenship" means the same as that term is defined in Section 53G-7-1202.
- (5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.
- (6) "Funds" means School LAND Trust program funding as defined in Section 53F-2-404.
- (7) "Most critical academic need" means an academic need, consistent with the core standards in Rule R277-700, identified by a council through the annual review of schoolwide assessment data and other relevant indicators.
- (8) "Parent," for a charter school, includes a grandparent of a student currently enrolled at the school.
- (9)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.
- (b) "Principal" includes the director of a charter school.
- (10) "Sample" means:
 - (a) one-third of schools within a district;
 - (b) at least ten schools; and
 - (c) all schools if there are less than ten schools in a district.
- (~~10~~)11 "Satellite charter school" has the same meaning as that term is defined in Section R277-550-2.
- (~~11~~)12 "School safety principles" has the same meaning as described in Section 53G-7-1202.
- (~~12~~)13 "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of an LEA.
- (~~13~~)14 "Teacher and Student Success Plan" or "TSSP" means the plan required of each school under Section 53G-7-1305.
- (~~14~~)15 "Trust Distribution Account" means the restricted account within the Uniform School Fund created under Subsection 53F-9-201(2).
- (16) "UPEFS" means the Utah Public Education Finance System.
- (17) "Website" means the School LAND Trust website.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust [P]program funds shall have:

NOTICES OF PROPOSED RULES

(a) a school community council as required by Section 53G-7-1202 and Rule R277-491;

(b) a charter school trust land council as required by Section 53G-7-1205; or

(c) an approved exemption under this rule.

(2) Notwithstanding Subsection (1)(a), the USDB Advisory Council may fill the responsibilities of a school community council for USDB.

([2]3) A public school receiving School LAND Trust [P]program funds shall submit a [principal assurance form, as described in Section R277-491-4 and Subsection 53G-7-1206(3)(e), prior to the public school receiving a distribution of School LAND Trust Program funds.]membership form consistent with the required membership in Subsection (1) that includes a principal assurance consistent with Subsection 53G-7-1206(3)(c) by October 1 annually.

([3]4) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council[;] consistent with Section 53G-7-1205; and

(b) [be subject to Section 53G-7-1203 if the charter trust land council is not a charter school governing board; and

—(e)—]receive training about Section 53G-7-1206.

(5) A charter trust land council that is not a charter governing board shall:

(a) be subject to Section 53G-7-1203;

(b) have parent or grandparent members elected by parents of students attending the charter school; and

(c) post the following items on the school's website by October 1 annually:

(i) an invitation to parents to serve on the Charter Trust Land Council;

(ii) the dollar amount the school receives each year from the School LAND Trust program;

(iii) a copy or link to the current Teacher and Student Success Plan;

(iv) approved minutes of Charter Trust Land Council meetings for at least a year;

(v) the proposed council meeting scheduled for the school year;

(vi) a telephone number, email address, or both where each council member can be contacted directly;

(vii) a link or copy of the final reports of the school for the last two years, as required by Subsection 53G-7-1206(5);

(viii) a link or copy of the school plan for the current year.

([4]6) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in S[ub]section 53G-7-1205([9]) upon application to the school's authorizer if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

([5]7) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan, approved by the school's governing board, to the [School Children's Trust Section]approving entity on the School LAND Trust website:

(a) no later than April 1 for schools authorized by the State Charter School Board; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

([6]8)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Subsection 53G-7-1206(4)(d).

([7]9)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the [School Children's Trust Section]approving entity annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption [from]to a school using the Superintendent-provided form, described in Subsection ([7]8)(a), on a case-by-case basis.

([8]10) In addition to the requirements of Subsection ([6]7), the School LAND Trust plan described in Subsections 6 and ([7]8)(a) shall include the date the council voted to approve the plan.

([9]11)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's signature[; as described in Subsection (9)(a);] digitally [or through a paper form created by the Membership Form on the website and uploaded to the database]through the website.

(c) An [LEA or district school, upon the permission of the LEA's governing board,]approving entity may design the [LEA or district school's]approving entity's own form to collect the information required by this Subsection ([9]10).

([10]12)(a) An approving entity for a [school—]district school or a charter school authorized by an authorizer other than the State Charter School Board shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the [School Children's Trust Section]Superintendent that the review is complete.

(d) For an LEA to receive its full distribution in July, the LEA shall submit plans with all required approvals online no later than May 15.

([11]13)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement needed to implement plan goals.

(b) The approving entity shall determine whether a School LAND Trust plan is evidence based and consistent with the approving entity's pedagogy, programs, and curriculum.

(c) [Prior to approving a School LAND Trust plan, the]The president or chair of the approving entity shall provide training

annually on the requirements of Section 53G-7-1206 to the members of the approving entity.

(~~12~~14)(a) After receiving the notice described in Subsection (10)(c), the ~~[School Children's Trust Section]~~Superintendent shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The ~~[School Children's Trust Section]~~Superintendent shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the ~~[School Children's Trust Section]~~Superintendent is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(~~13~~15) If an approving entity fails to comply with Subsection (12)(c), ~~the~~ Superintendent may report the failure to the Audit Committee of the Board as described in Section R277-477-~~9~~8.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall review school-wide assessment data annually and use School LAND Trust ~~[P]~~program funds in data-driven and evidence-based ways to improve educational outcomes, consistent with the academic goals of the school's teacher and student success plan framework under ~~S[ub]section 53G-7-1304~~(~~1~~)(a) and the priorities of the LEA governing board, including:

(a) strategies that are measurable and show academic outcomes with multi-tiered systems of support; and

(b) counselors and educators working with students and families on academic and behavioral issues when a direct impact on academic achievement can be measured.

(2) A school's School LAND Trust ~~[P]~~program expenditures shall have a direct impact on the instruction of students in the particular school's areas of most critical academic need and consistent with the academic priorities of the LEA's governing board:

(a) to increase achievement in:

- (i) English;
- (ii) language arts;
- (iii) mathematics; and
- (iv) science; and

(b) for high schools to:

- (i) increase graduation rates; and
- (ii) promote college and career readiness.

(3) A school may not use School LAND Trust ~~[P]~~program funds for the following:

(a) costs related to district or school administration, including accreditation;

(b) expenses for:

- (i) construction;
- (ii) maintenance;
- (iii) facilities;
- (iv) overhead;
- (v) furniture;
- (vi) security; or
- (vii) athletics; or

(c) expenses for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school that demonstrates appropriate progress and achievement consistent with the academic priorities of the LEA governing board outlined in Subsection (2) may request local board

approval of a plan to address other academic goals if the plan includes:

(a) how the goal is in accordance with the core standards established in Rule R277-700;

(b) how the action plan for the goal is:

(i) data driven;

(ii) evidence based; and

(iii) has a direct impact on the instruction of students consistent with Subsections (1) and (2);

(c) the data driving the decision to spend School LAND Trust funds for academic needs outlined in this Subsection (4); and

(d) the anticipated data source the school will use to measure progress.

(5) A council may budget and spend no more than \$7,000 for an academic goal or component of an academic goal than incorporates any combination of the following:

(a) digital citizenship training under Subsection 53G-7-1202(3)(a)(iii); or

(b) safety principles consistent with Subsection 53G-7-1202(~~1~~)(~~4~~)(3)(a)(v).

(6) A school district or local school board may not require a council or school to spend the school's School LAND Trust ~~[P]~~program funds on a specific use or set of uses.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust ~~[P]~~program may not exceed \$2 per ~~[awarded]~~student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1) An LEA shall report the prior year expenditure of distributions for each school.

(2) The total expenditures each year described in Subsection (1) may not be greater than the total available funds for an LEA.

(3)(a) In an unanticipated circumstance, a school within an LEA may be allowed a small advance from a school's allocation for the next fiscal year when:

(i) the LEA has unspent School LAND Trust funds to cover the advance; and

(ii) the LEA governing board approves the advance.

(b) If a school receives an advance under Subsection

(3)(a):

(i) the LEA shall decrease the beginning allocation to the school for the next fiscal year in the same amount as the advance; and

(ii) restore the same advance amount to the unspent School LAND Trust funds of the LEA.

(c) A school's beginning School LAND Trust funds balance for a new school year shall be:

(i) the school's allocation for the new school year;

(ii) minus any advance approved under Subsection (3)(a);

(iii) plus any carry-over from the prior year.

(4) A school district shall adjust the current year distribution of funds received from the School LAND Trust ~~[P]~~program as described in Section 53F-2-404, as necessary to maintain an equal per student distribution within a school district based on:

(a) school openings and closings;

(b) boundary changes; and

(c) other enrollment changes occurring after the fall enrollment report.

(5) An LEA shall provide the current year distribution and carry-over amount from the prior school year to the principal by October 1 annually.

~~(5)~~(6) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

~~(6)~~(7)(a) For purposes of this Section (5), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (6)(c); and

(ii) is not a newly opening charter school as described in Subsection (7).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (6).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (6)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

~~(7)~~(8)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (6)(c); or

(ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

~~(8)~~(9) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the Superintendent shall deposit the unused balance in the Trust Distribution Account.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53G-7-1206(4)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval;~~and~~

(ii) approve an amendment before the school uses funds according to the amendment~~;~~ and

(iii) notify the Superintendent an amendment is ready for review.

(c) The ~~[School Children's Trust Section]~~Superintendent shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The Superintendent shall recommend a district or school with a consistently large carryover balance over multiple years for corrective action for not making adequate and appropriate progress on an approved plan.

(c) The Superintendent may take corrective action to remedy excessive carryover balances consistent with Rule R277-114.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures ~~[by specific category on the]of School LAND Trust funds through UPEFS [website on or before October 1]~~consistent with UPEFS requirements and timelines.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Subsection 53G-7-1206(5)(b).

(6) A principal shall submit a final report on the School LAND Trust website~~[by October 20]~~ annually before a School LAND Trust plan for the coming school year is submitted.

(7) An approving entity shall ensure that a final report includes clear explanations of plan implementation and expenditures and meets the confidentiality requirements of Rule R277-487 prior to March 1 to allow the review required by Section R277-477-7.

~~(7)~~(8) An LEA shall provide an annual report to its governing board on the implementation of each school's prior year School LAND Trust plans by ~~[January 31]~~March 1 annually.

R277-477-7. ~~[School LAND Trust Program—School Children's Trust Section to Review]~~Compliance Review.

(1)(a) The ~~[School Children's Trust Section]~~Superintendent shall review a sample of school final reports~~[each school's final report]~~ for consistency with the approved school plan.

(b) The ~~[School Children's Trust Section]~~Superintendent shall create a list of all schools in the sample whose final reports indicate that funds from the School LAND Trust ~~[P]~~program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The ~~[School Children's Trust Section]~~Superintendent shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board and charter approving entity, as applicable.

(2) The ~~[School Children's Trust Section]~~Superintendent may visit a school receiving funds from the School LAND Trust ~~[P]~~program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The Superintendent shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The Superintendent shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

R277-477-8. Superintendent Responsibilities.

The Superintendent shall:

(1) represent the Board on the Land Trusts Protection and Advocacy Committee in accordance with Section 53D-2-202;

(2) review and approve a charter school plan on behalf of the State Charter School Board;

(3) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with statute and rule;

(4) review and approve a plan submitted by the USDB [school community council] **Advisory Council** as necessary;

(5) prepare the annual distribution of funds to implement the School LAND Trust [P] program pursuant to Section 53F-2-404;

[~~(6) report the total distribution amount for the following fiscal year to the Legislative Fiscal Analyst before December 31 annually;~~]

([7]6) provide training to entities involved with the School LAND Trust [P] program consistent with Subsection 53G-7-1206(8); and

([8]7) implement corrective action, if appropriate, consistent with Rule R277-114 if an LEA or its council fails to comply with the provisions of this rule.

KEY: schools, trust lands funds, school community councils
Date of Enactment or Last Substantive Amendment: 2021[May 26, 2020]
Notice of Continuation: March 30, 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53F-2-404

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-491	Filing No. 53548

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-491. School Community Councils
3. Purpose of the new rule or reason for the change:
The rule is being amended due to the changes outlined in H.B. 222, passed in the 2021 General Session.

4. Summary of the new rule or change:
The changes update reporting requirements to work with the School Children's Trust's new website and make additional updates in requirements for oversight of School LAND trust funds such as: clarify the approval role of the authorizing entity for a charter school, and define a sample for review of Final Reports.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments are due to H.B. 222 (2021).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments are due to H.B. 222 (2021).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments are due to H.B. 222 (2021).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are due to H.B. 222 (2021).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendments in the rule change are due to H.B. 222 (2021).

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses

are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53D-2-202	Subsection 53F-2-404(2)(d)
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: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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R277. Education, Administration.**R277-491. School Community Councils.****R277-491-1. 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; 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:

(a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53G-7-1202 through 53G-7-1203;

(b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;

(c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;

(d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;

(e) increase public awareness of:

(i) school trust lands;

(ii) the permanent State School Fund; and

(iii) educational excellence; and

(f) enforce compliance with the laws governing a school community council.

(3) This rule does not apply to charter schools.

R277-491-2. Definitions.

(1) "Local school board" means the locally elected school board designated in Section 53G-4-201.

(2) "Parent member" means the same as the term is defined in Section 53G-7-1202.

(~~2~~3)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes a specific designee of the principal.

(~~3~~4) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4)5) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) In addition to the election notice requirements of Section 53G-7-1202, the principal shall provide notice of:

(a) the location where a ballot may be cast; and

(b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot through a district approved

election process that is consistent with the election requirements in Subsection 53G-7-1202(5).

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(5)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

(i) recruit members;

(ii) have meetings; and

(iii) publicize the opportunity to serve on the council.

(b) A local school board shall make the determination whether to grant the exemption for a school described in Subsection (5)(a).

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a ~~[Principal's Assurance Form]~~ principal's assurance affirming:

(a) the school community council's election;

(b) that ~~[vacancies were filled by election if]~~ unfilled positions were filled by appointment as necessary, consistent with Subsection 53G-7-1202(5); and

(c) that the school community council's bylaws or procedures comply with Sections 53G-7-1202, 53G-7-1203, ~~[Rule R277-477,]~~ and this rule.

(2) ~~[In addition to the requirements of Subsections 53G-7-1203(5) and (6),]~~ To encourage parental involvement in a school, each year the principal shall post the following information on the school's website on or before October ~~[20]~~1:

(a) an invitation to a parent to serve on the school community council ~~[that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds];~~

(b) the dollar amount the school receives each year from the School LAND Trust Program;

(c) a copy of or link to the school's current Teacher and Student Success Plan ~~[as required in Section 53G-7-1302];~~ ~~[and]~~

(d) approved minutes of [approved]the school's council meetings for [the current school]for at least a year[-];

(e) a proposed council meeting schedule for the year;

(f) direct contact information for each council member, including a telephone number or email address, or both;

(g) a copy of or link to the school's plan or final report for the most recent two prior years, consistent with Section 53G-7-1206; and

(h) a copy of or link to the school's current year plan.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53G-7-1202(5)(j).

(2) The school community council chair shall:

(a) set the agenda for every meeting;

(b) conduct every meeting;

(c) keep written minutes of every meeting, consistent with Section 53G-7-1203;

(e) inform council members about resources available on the School LAND Trust Program website; and

NOTICES OF PROPOSED RULES

(f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53G-7-1203(10).

(b) The rules of order and procedure shall outline the process for:

(i) electing the school community council, including:

(A) the number of parent members and school employee members on the council; and

(B) ~~[beginning dates for the term of each member's position]~~ member positions beginning in odd years or even years to ensure half of the council members positions are open for election each year;

(ii) selecting a chair and vice chair;

(iii) removing from office a member who moves away or fails to attend meetings regularly; and

(iv) a member to declare a conflict of interest if required by the local school board's policy.

(2) The school community council shall:

(a) report on a plan, ~~[program, or expenditure]~~ including programs, practices, and expenditures at least annually to the local school board; and

(b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current safety principles and practices used by the school district and school to facilitate the school community council's responsibilities under Subsection[s] 53G-7-1203(3)(a)(iii)(D), (iv), and (v) ~~2(3).~~

(b) The report described in Subsection (3)(a) shall include:

(i) information concerning internet filtering protocols for school and district devices that access the internet;

(ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training provided to a student and parent by the school or district.

~~[(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53E, Chapter 2, Part 5.]~~

(4) A school community council shall comply with the requirements of Subsection 53G-7-1202(3)(vi).

(5) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

(6) A school community council may hold electronic meetings consistent with:

(a) the policies of the local school board; and

(b) the requirements of Section 53G-7-1203.

KEY: school community councils

Date of Enactment or Last Substantive Amendment: 2021 ~~August 19, 2019~~

Notice of Continuation: June 5, 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); ~~53A-1a-108; 53A-1a-108.1; 53G-7-12~~ Title 53G, Chapter 7, Part 12

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R357-3	Filing No. 53542

Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state:	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:
R357-3. Economic Development Tax Increment Financing Rule
3. Purpose of the new rule or reason for the change:
The purpose of this rule filing is to update definitions, eligibility criteria, tax credit calculation, and the contract modification process. Additionally, H.B. 348, passed during the 2021 General Session, changed the Governor's Office of Economic Development (GOED) to the Governor's Office of Economic Opportunity (GO Utah).
4. Summary of the new rule or change:
This rule filing updates: Section R357-3-102 to include definitions of apportionment, high paying job, and leisure and hospitality industry; Section R357-3-104 amends references of GOED to GO Utah; Section R357-3-105 amends references of GOED to GO Utah, and establishes the criteria for an award above 30% of new state revenues; Section R357-3-106 amends the references of GOED to GO Utah, and establishes criteria to receive, maintain and modify tax credit eligibility; Section R357-3-107 established merger and acquisition eligibility requirements; and Section R357-8-108 establishes county economic distress criteria.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no new aggregate anticipated cost or savings to the state budget. The rule is merely updating program criteria and making technical changes.
B) Local governments:
There is no new 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 new aggregate anticipated cost or savings to small businesses because this proposed amendment 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 new aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment 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.
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 new aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment 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 new 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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Governor's Office of Economic Development, Dan Hemmert, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The purpose of this rule filing is to clarify the standards for participation in the program and make technical changes. This rule will have no impact on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Dan Hemmert, 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 63N-2-104		
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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 until:	07/01/2021
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10. This rule change MAY become effective on:	07/08/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Dan Hemmert, Executive Director	Date:	05/13/2021
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R357. Governor, Economic ~~Development~~ Opportunity.
R357-3. Economic Development Tax Increment Financing Rule.
R357-3-101. Title.

This rule is known as the "Economic Development Tax Increment Financing Rule."

R357-3-102. Definitions.

In addition to the definitions in Sections 63N-1a-102 and 63N-2-103 the following terms are defined ~~[Title 63N, Chapter 2, Section 103 as defined or used in this rule]:~~

~~_____ (1) "Board" means the Board of Business and Economic Development created in Section 63N-1-401.~~

(1) "Apportionment" means a reduction in new state revenues in the period being assessed by the percentage of project employee wages against total employee wages.

(2) "Direct investment within the geographic boundaries", as used in Subsection 63N-2-104(2)(b)(ii), means that the applicant for the tax credit will invest in a new commercial project in the economic development zones.

~~_____ (3) "Executive Director" means the Executive Director of GOED.~~

~~_____ (4) "GOED" means The Governor's Office of Economic Development.]~~

~~_____ (3) "High paying job" includes adjusted wage percentages in counties experiencing economic distress as outlined in Section R357-3-108.~~

~~_____ ([5]4) "Retail Business", as used in Subsection 63N-2-103(6)(b), means the physical location from which the general public may directly purchase merchandise or direct services and does not include distribution centers, the corporate functions associated with retailing, or other activities associated with retailing that may be accomplished from any physical location or that are not dependent on proximity to end consumers for retail sales.~~

~~_____ (5) "Leisure and Hospitality Industry" means businesses, as determined by the office, that relate to service-providing industries consisting of:~~

~~_____ (a) arts, entertainment, and recreation under NAICS code 71;~~

~~_____ (b) accommodation and food services under NAICS code 72; and~~

~~_____ (c) resort, resort building, or resort boundary as defined in Section 32B-8-102.~~

R357-3-104. Application Content.

(1) In order to determine a company's eligibility for an Economic Development Tax Increment Financing Incentive the company may be required to supply additional information to GO Utah~~[ED]~~, which may include:

- (a) balance sheets;
- (b) income statements;
- (c) cash flow statements;
- (d) tax filings;
- (e) market analyses;
- (f) competing states' incentive offers;
- (g) corporate structure;
- (h) workforce data;
- (i) forecasted new state revenue associated with the new commercial project;

(j) forecasted incremental job creation associated with the new commercial project;

(k) forecasted wages associated with the new commercial project; and

(l) other information as determined by GO Utah~~[ED]~~.

(2) If a company fails to provide any requested information GO Utah~~[ED]~~ may deny the application.

(3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option, at its sole discretion and responsibility, to designate what information provided is private or protected subject to Section 63G-2-302 ~~[and]~~ or Section 63G-2-305.

R357-3-105. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

(1) The amount and duration of a tax credit award shall be determined on a case-by-case basis. The factors that ~~[will]~~may be considered include ~~[but are not limited to]:~~

(a) forecasted new state revenue associated with the new commercial project;

(b) forecasted new incremental jobs associated with the new commercial project;

(c) forecasted wages associated with the new commercial project;

(d) the demonstrated support of the local community for the project;

(e) the competitive nature of the project, to what extent other states have available incentives for the new commercial project, and the competitiveness of the other incentives;

(f) whether the company is projecting positive long term growth;

(g) the overall benefit to the [S]state from the new commercial project;

(h) the uniqueness of the economic opportunity;

(i) how the tax credit would mitigate the loss or potential loss of new state and local revenues in the [S]state, high paying jobs, new economic growth, or that address the factors set forth in UCA 63N-2-102 and 104.

(j) whether the company's industry has been determined by the GO Utah[ED] Board as a [F]target [F]industry, as defined in Subsection 63N-3-102 (9);

(k) the economic environment, including the unemployment rate and the underemployment rate, at the time of the new commercial project or company applies;

(l) the location of the new commercial project;

(m) comparison to previously incented projects in size, scope, and industry; and

(n) other factors as reasonably determined by the [A]administrator.

(2) The factors for an award higher than 30% of new state revenues for a project located in a county of the third-class, or a municipality with a population of 10,000 or less located within a county of the second class and that is experiencing economic hardship are:

(a) factors in Subsection R357-3-105 (1);

(b) evidence of significant financial support of the local community for the project;

(c)(i) capital expenditures of at least \$500,000,000 for the new commercial project;

(ii) the new capital project is in targeted industry as defined by the office; or

(iii) local taxing entities are offering a tax increment agreement of at least 75% and 25 years of property tax rebates;

(d)(i) the new capital project creates at least 2,000 new high-wage jobs;

(ii) the new capital project is in targeted industry as defined by the office; or

(iii) the average wages for the new high-paying jobs are at least 300% of the average county wage;

(iv) local taxing entities are offering a tax increment deal in excess of 75% and 25 years for property tax rebates;

(3) A new commercial project within the leisure and hospitality industry sector, located in a county of the fifth or sixth class may receive an award up to 50% of new state revenues over 20 years if the project:

(a) has capital expenditure of at least \$10,000,000;

(b) creates a significant number of new high-paying jobs;

(c) is of strategic importance to the state, county and city;

(d) is adjacent to a unique, high visitation tourist area; and

(e) location would otherwise be underserved in leisure and hospitality without being provided an incentive.

R357-3-106. Economic Development Tax Credit Process.

(1) A[~~H~~—a]nnual tax credits shall be based on actual incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

(2) GO Utah[ED] shall propose a tax credit structure based on the factors set forth in this rule in a combination GO Utah[ED] deems

the most effective and beneficial in weighing the benefits of the State, local community, and company.

(a) GO Utah[ED] shall propose the tax credit terms and structure to the Board prior to making a final offer to the business entity.

(3) If the Executive Director approves an Economic Development Tax Credit, GO Utah[ED] shall provide a tax credit offer letter to a business entity that includes:

(a) the proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the [F]tax [C]redits may be claimed;

(b) a statement that the company must demonstrate sufficient growth and supply; and

(c) documentation that will be required each incentive year in order to claim a tax credit for the following tax year.

(4) If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

(5) If the Executive Director denies an application for an Economic Development Tax Credit, GO Utah[ED] shall provide a letter to the business entity that includes:

(a) notice of the application denial;

(b) reason for denial; and

(c) notice that the business entity can reapply for a tax credit if changes to the proposed new commercial project are made.

(6) GO Utah[ED] will establish a baseline with the company that consists of the count of full-time employees and state revenue reflective of presence in the state prior to board approval date. Baseline must be established prior to awarding a tax credit.

(7) A company with an active contract, who desires a tax credit, must provide an annual report for the incentive year in the format and method as directed by GO Utah[ED], with a level of accuracy comparable with information GO Utah[ED] obtains from the Department of Workforces Services and the Tax Commission, that at a minimum must contain:

(a) a list of [a~~ll~~—]individuals in Utah that received compensation at the company [a~~nd~~]or project with their position, start date, termination date, hours paid, wages paid, benefits paid and employer withholding taxes paid or an aggregate list that provides qualification and legislative reporting required for 63N-2-106, as determined GO Utah[ED].

(b) the requested amount of tax revenue to be rebated from withholding, sales and use, vendor paid sales tax and income tax verified as paid, remitted and receipted to the state.

(c) maintains a current authorization to disclose from the Utah State Tax Commission from the baseline period to three years after the end date of the contract.

(8) The office may cause an apportionment for the following reasons:

(a) a business entity's project scope is to create or develop a new good or service that is co-located within a current location that is not transparent with other operations, employees and revenue, which would not be included in the calculation of new state revenue;

(b) a business entity has a material amount of employees operating the company's retail business; or

(c) a company adjusts operations that create operations outside the scope of the agreement or boundaries of the economic development zone.

(9) The office may consider sales and use tax paid for capital asset purchases of a business entity within the scope of the agreement up to 50% of the total amount of state tax.

(10) A company who hires employees for the new commercial project through a professional employment organization

NOTICES OF PROPOSED RULES

shall require the professional employment organization to provide the office an employee report under attestation.

R357-3-107. Modification of Agreement~~(the Tax Credit Offer or Contract)~~.

(1) GO Utah~~ED~~ may modify, or a business entity may request to modify, the terms of a tax credit offer or contract as set forth below:

(a) Substantive Modifications: under extraordinary circumstances, a business entity may request to modify the terms of the tax credit agreement if:

(i) there is a substantial change to new commercial project plan; and

(ii) modifying the terms of the tax credit would benefit the ~~S~~state.

(b) Nonsubstantive Modifications: GO Utah~~ED~~ and the business entity may make nonsubstantive modifications to the tax credit contract to:

(i) correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

(ii) make technical changes that do not alter the tax incentive amount or violate any state or federal law; or

(iii) adjust the timeline ~~of no more~~ less than 24 months.

(2) Substantive modifications require Board consultation prior to the Executive Director's approval or denial.

(3) ~~AH-F~~Requests and modifications shall be documented and maintained by ~~the~~GO Utah~~ED~~.

(4) When a business entity acquires another company with employees in Utah or if another Utah company acquires a business entity and the office can distinguish between both entities' employees and separate how much new state revenue is generated from the acquiree and acquirer, no changes to the baseline employees or new state revenues will be made.

(5) When a business entity acquires another company with employees in Utah or if another Utah company acquires a business entity and the office cannot separate the acquiree's and acquirer's employees or new state revenue the office shall:

(a) increase the baseline to the lesser of the acquiree's number of full-time positions as determined by the office:

(i) on the GO Utah board approval date; or

(ii) at the time of acquisition; and

(b) increase baseline state revenue to the same time period as chosen for baseline jobs.

R357-3-108. High Paying Jobs and Economic Distress.

(1) To establish that a county is experiencing economic distress a business entity or county shall submit:

(a) evidence that the county's unemployment rate was at least 5% for the six consecutive months prior to the application date;

(b) evidence that the county experienced year over year economic decline; and

(c) other evidence as requested by the office.

KEY: economic development, jobs, tax credit

Date of Enactment or Last Substantive Amendment: 2021~~December 24, 2018~~

Authorizing, and Implemented or Interpreted Law: 63N-2-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R357-39	Filing No. 53544

Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state:	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:
R357-39. Talent Development Grant Rule
3. Purpose of the new rule or reason for the change:
H.B. 348, passed during the 2021 General Session, established talent development grants under the industrial assistance account administered by the Governor's Office of Economic Opportunity. The purpose of this rule is to establish the criteria to receive talent development grant funds.
4. Summary of the new rule or change:
This rule will codify definitions, eligibility criteria, proposal and submission process, method for selecting awards, contract requirements, contract modification process, funding distribution, and reporting requirements.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no new aggregate anticipated cost or savings to the state budget. This rule is merely establishing the process to receive talent development grant funds.
B) Local governments:
There is no new 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 new 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.

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

There is no new aggregate anticipated cost or savings to non-small businesses because this proposed rule does not create new obligations for non-small businesses, nor does it increase the costs associated with any existing obligation.

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 new 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 new compliance costs for affected persons because participation 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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Governor's Office of Economic Development, Dan Hemmert, has reviewed and approved this fiscal analysis.

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

The purpose of this rule filing is to establish the standards and review process for talent development grants under the industrial assistance account. This rule will have no negative impact on businesses. Rather, the grant will assist businesses to recruit, train, and hire employees.

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

Dan Hemmert, 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-3-201(2)	Section 63N-3-112	
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Dan Hemmert, Executive Director	Date:	05/14/2021
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R357. Governor, Economic Opportunity.

R357-39. Talent Development Grant Rule.

R357-39-101. Title.

This rule is known as the "Talent Development Grant Rule".

R357-39-102. Definitions.

Terms are defined in Sections 63N-1a-102 and 63N-3-102.

R357-39-103. Authority.

This rule is adopted by the office under the authority of Subsection 63G-3-201 (2) (d).

R357-39-104. Eligibility Criteria.

(1) A business representative shall certify that:

- (a) the business has a skilled labor gap;
- (b) the proposed grant will meet the gap need; and
- (c) the business has significant one-time or ongoing hiring and training demands.

(2)(a) To qualify a business shall have a substantial or potential presence in Utah, as determined by the office, by weighing:

- (i) the total workforce and percentage of business's workforce in Utah;
- (ii) the amount of business taxes paid to Utah;
- (iii) the relative size of the business;
- (iv) whether the business's principal place of business is Utah;
- (v) the likelihood that the business will maintain a significant presence in Utah;
- (vi) the degree to which the business's activities and operations positively impact Utah's economy;
- (vii) the business's registration with the Utah Division of Corporations and Commercial Code as an active, for-profit business entity; and
- (viii) the business's license in the appropriate city or county.

R357-39-105. Proposal and Submission Process.

(1) Subject to available funds, the office will accept proposals for talent development grants on an ongoing basis.

(2) The proposal shall include the following:

- (a) a detailed description of the hiring and training plan;
- (b) forecasted new incremental high paying jobs;
- (c) forecasted wages associated with new incremental high paying jobs;
- (d) description of skilled labor positions;

(e) description of the potential economic impact on Utah's economy; and

(f) an outlined budget for the plan, including:

- (i) a description of any funds already secured for activities related to the program;
- (ii) breakdown of costs to complete the plan; and
- (iii) an itemized budget that details how the funding will be allocated, tracked, and reported.

(3) If a business fails to provide any requested information GO Utah may deny the application.

R357-39-106. Method for Selecting Awardees.

(1) The office will, according to its discretion and judgment, review the business's proposal by considering:

- (a) statewide or regional importance of the industry to Utah's economy;
- (b) relative size of the sector, its stability, and growth potential;

(c) characteristics of Utah's workforce including education and training;

- (d) the current availability of other sources of funding;
- (e) the potential for the industry to develop new jobs and business opportunities in Utah;

(f) likelihood that skilled labor in this sector will result in the creation of a business in Utah or growth of existing Utah business;

- (g) number of positions to be trained and filled;
- (h) impact on the local economy;
- (i) projected time to fill job needs; and
- (j) any other factor the office deems relevant.

R357-39-107. Grant Amount, Award, and Required Contract.

(1) The office reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all proposals.

(2) Upon award of a talent development grant, and prior to disbursement of any funds, awardee shall enter into a contract with the office governing the use of talent development grant funding.

(3) Unless addressed in the terms and conditions of the contract between awardee and the office the following provisions shall apply:

- (a) talent development grant funding may not be used to provide a primary benefit to any state other than Utah; and
- (b) for all other eligibility requirements, awardees must maintain eligibility status until the collaboration is complete, scope of work requirements have been met, final disbursement of funding has been made, and first year reporting has been completed.

R357-39-108. Contract Modifications.

(1) Awardee may request a modification to the terms of a contract.

(2) The office may deny a modification request for any reason.

(3) The office shall have discretion to agree to reasonable, nonsubstantive changes.

- (a) Non-substantive changes may include:
 - (i) changes to timelines within the scope of work;
 - (ii) corrections to clerical errors in the proposal materials; and
 - (iii) technical changes to conditions that do not alter the budget, business's eligibility status, or violate any state or federal law.

(4) Substantive changes shall be approved by the office in consultation with the Go Utah Board.

(5) Approved changes shall be made in writing and through an amendment modifying the terms of the contract.

(6) Awardees refusal or failure to sign the contract within 90 days of receipt of the contract constitutes a rejection of the talent development grant and a waiver of any rights and benefits.

R357-39-109. Funding Distribution.

(1) The office shall reimburse the awardee for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by the office after sufficient documentation is provided in accordance with the terms and conditions provided in the contract.

(3) Misrepresentation to the office or violations of the agreement may result in forfeiture of talent development grant funding, repayment of all or a portion of the funding received, or disqualification from continued funding.

(4) The office reserves the right to audit the use of any talent development grant funding.

R357-39-110. Reporting and Cooperation Requirements.

(1) The awardee shall report to the office and provide documentation evidencing the following metrics for inclusion in the annual report described in section 63N-1a-306:

(a) the number of participants in the program;

(b) the number of participants who have completed training offered by the program;

(c) any additional data needed as required and outlined in the terms of the contract.

KEY: economic development, talent development

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2); 63N-3-112

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R384-100	Filing No. 53435

Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Health Promotion	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 141010	
City, state, zip:	Salt Lake City, UT 84114-1010	
Contact person(s):		
Name:	Phone:	Email:
Marie Nagata		mnagata@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R384-100. Cancer Reporting Rule

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

The current Cancer Reporting Rule provides contact information for Utah Cancer Registry that is no longer correct and refers to reporting procedures, based on paper forms that are obsolete. This rule has not been amended for over 10 years. This amendment is proposed to provide correct current contact information for the Utah Cancer Registry, to refer to modern electronic reporting procedures, and to bring this rule up to date in other respects.

4. Summary of the new rule or change:

Amendments are proposed as follows. In Subsection R384-100-1(3), the clarification of the purpose of maintaining cancer registry records.

In Section R384-100-2, references are added to applicable definitions already found in Utah Code. Specialized definitions that are not needed are removed.

In Section R384-100-3, the language describing "Reportable Cases" is updated. The definition of a reportable case may change slightly from year to year based on recommendations of national standard-setting organizations for cancer registries, and therefore, reference is made to current information available from Utah Cancer Registry. Correct contact information for the registry is provided.

The old Section R384-100-5 has become the new Section R384-100-4. Language describing entities required to report is amended to simpler language. The old Section R384-100-4 is re-numbered Section R384-100-6.

A new Section R384-100-5 is added. This section describes entities that provide information to the cancer registry but do not fall under the description of required reporters.

In Section R384-100-6, the description of "Case Report Contents" (old Section R384-100-4) is amended to describe modern cancer registry standards. Different expectations for case report contents are stated for different reporting entities. Because expectations for cancer report contents change slightly from year to year based on recommendations of national standard-setting organizations for cancer registries, reference is made to an electronic data item list available from the Utah Cancer Registry website and updated annually.

The old Section R384-100-6 is re-numbered Section R384-100-8.

Section R384-100-7 is substantially amended to describe modern electronic reporting procedures. Correct contact information for Utah Cancer Registry is provided so that entities may contact Utah Cancer Registry to establish electronic reporting.

In Section R384-100-8, time requirements for reporting are described in more detail.

The old Section R384-100-8 is re-numbered Section R384-100-9. Language is amended to provide more detail.

The old Section R384-100-9 is re-numbered Section R382-100-10.

The old Section R384-100-10 is re-named and re-numbered Section R384-100-11.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The amendments to the existing administrative rule are not expected to have any costs to the state budget, because the changes do not affect the state directly.

B) Local governments:

The amendments to the existing administrative rule are not expected to have any costs to local governments because the changes do not affect local governments directly.

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

It is estimated that the proposed amendments will have no net fiscal impact on small businesses because the new electronic reporting process described in this amendment will require no more resources than the old manual reporting process. Under the Cancer Reporting Rule currently in place, health care providers and non-hospital health care facilities that diagnose or treat cancer and are small businesses are required to report when contacted by Utah Cancer Registry regarding specific reportable cases. Under this process, a skilled staff member of the provider or facility manually reviews electronic medical records, fills in information on forms, and transmits these by fax. Under the proposed amended rule, these entities will report electronically using information queried from an electronic medical record. The Division of Disease Control and Prevention, Health Promotion expects that an information technology employee of the business will spend approximately one hour (estimated \$105 hour), with telephone consultation with Utah Cancer Registry, to initially set up the new electronic reporting process. A further hour per quarter may be required to maintain the submission of electronic data for cancer registry reporting. This new cost for electronic reporting will be balanced by cost saving because there will no longer be a need for

employee time to be spent on the manual reporting process.

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

It is estimated that the proposed amendments will have no net fiscal impact on non-small businesses. For non-small businesses that are hospitals or laboratories, the reporting requirements in the amended rule are a more accurate description of modern electronic cancer reporting processes that these entities currently perform. For non-small businesses that are health care providers and non-hospital health care facilities, the anticipated impacts are similar to those described above for small businesses, i.e. transition from manual to electronic reporting processes. Any new cost in the form of employee time spent setting up electronic reporting is anticipated to be balanced by cost saving because there will no longer be a need for employee time to be spent on the manual reporting processes.

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

Other entities anticipated to be affected by the Cancer Reporting Rule are not-for-profit health care organizations operating hospitals, laboratories, and other health care facilities in Utah. It is estimated that the proposed amendments will have no net fiscal impact on these entities. The reporting requirements in the amended rule are a more accurate description of modern electronic cancer reporting processes that these entities currently perform.

F) Compliance costs for affected persons:

The amendments to the existing administrative rule are not expected to have any compliance costs to affected persons, because the changes do not affect individuals directly.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

There is no fiscal impact on business because any new costs for compliance are offset in cost savings of employee time.

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

Richard G. Saunders, Executive Director

Citation Information

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

Subsection 26-1-30(6)	Section 26-5-2	Section 26-5-3
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Reportable ICD-10-CM List for Utah Cancer Registry

Publisher	Utah Cancer Registry: https://uofuhealth.utah.edu/utah-cancer-registry/reporting-cancer-in-utah/docs/icd10-fy2020.pdf
Date Issued	01/01/2020
Issue, or version	2020

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)	Data items required by Utah Cancer Registry from reporting facilities
Publisher	Utah Cancer Registry: https://uofuhealth.utah.edu/utah-cancer-registry/reporting-cancer-in-utah/docs/ucr-required-data-items-2021+_revised-10-26-2020.xlsx
Date Issued	11/01/2020
Issue, or version	2021

Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Richard G. Saunders, Executive Director	Date:	04/23/2021
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R384. Health, Disease Control and Prevention, Health Promotion.

R384-100. Cancer Reporting Rule.

R384-100-1. Purpose Statement.

(1) The Cancer Reporting Rule is adopted under authority of sections 26-1-30 and 26-5-3.

(2) Cancers constitute a leading cause of morbidity and mortality in Utah and, therefore, pose an important risk to ~~the~~ public health. Through the routine reporting of cancer cases, trends in cancer incidence and mortality can be monitored and prevention and control measures evaluated.

(3) Cancer records are managed for research and statistical purposes by the Utah Cancer Registry ~~(Registry)~~ on behalf of the Utah Department of Health. This Cancer Reporting Rule is adopted to specify the reporting requirements for cases of cancer to the Registry. The Utah Department of Health retains ownership and all rights to the records.

R384-100-2. Definitions.

[As used in this rule:

~~(1) "Cancer" means all in situ (with the exception of in situ cervical cancers) or malignant neoplasms diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy or suggestible by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring in genital sites such as the vagina, clitoris, vulva, prepuce, penis and scrotum.~~

~~(2) "Follow up data" includes date last seen or date of death, status of disease, date of first recurrence, type of recurrence, distant site(s) of first recurrence, and the name of the physician who is following the case.~~

~~(3) "Health care provider" includes any person who renders health care or professional services such as a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, dentist, optometrist, podiatric physician, osteopathic physician, osteopathic physician and surgeon, or others rendering patient care.~~

~~(4) "Registrar" means a person who:~~

~~(a) is employed as a registrar and who has attended a cancer registrar training program;~~

~~(b) has two years of experience in medical record discharge analysis, coding, and abstracting, and has successfully completed a course in anatomy, physiology, and medical terminology; or~~

~~(c) has successfully passed the Certified Tumor Registrar examination offered by the National Cancer Registrars' Association.~~

~~(5) "Reportable benign tumor" means any noncancerous neoplasm occurring in the brain. (1) "Health care facility" means the same as defined in Utah Code Section 78B-3-403~~

~~(2) "Health care provider" means the same as defined in Section 78B-3-403~~

~~(3) "Hospital" means the same as defined in Section 78B-3-403~~

~~(4) "Anatomic pathology services" means the same as defined in Section 58-1-501.5~~

~~(5) "Clinical laboratory" or "laboratory" means the same as defined in Section 58-1-501.5~~

~~(6) "Identifiable health data" means the same as defined in Section 26-3-1(3)~~

~~(7) "Research and statistical purposes" means the same as defined in Section 26-3-1(6)~~

~~(8) "Laboratory" is defined as any facility that receives, refers, or analyzes clinical specimens.~~

(9) "Follow-up" is defined as information to determine the vital status and disease status of a patient with a prior reportable cancer diagnosis. This includes patient demographics, date of last contact with a reportable case, cancer recurrence status, date of death, and cause of death.

(10) "Registry" means Utah Cancer Registry.

(11) "Department" means Utah Department of Health

R384-100-3. Reportable Cases.

(1) Each case of cancer or reportable benign tumor, [as described in R384-100-2, that is] defined as reportable under current guidelines of the U.S. National Cancer Institute Surveillance, Epidemiology, and End Results (SEER) Program or the U.S. Centers for Disease Control and Prevention National Program of Cancer Registries (NPCR) and diagnosed or treated in Utah shall be reported to the Utah Cancer Registry, [546 Chipeta Way, Suite 2100, Salt Lake City, Utah 84108, telephone number 801-581-8407, FAX number 801-581-4560.]

(2) The registry provides a current, detailed list of reportable diagnoses, including links to current national guidelines, available:

(a) on the Registry's website <https://uofuhealth.utah.edu/utah-cancer-registry/>;

(b) by contacting the registry by email at ucr.info@hsc.utah.edu; or

(c) by contacting the registry by telephone at 801-581-8407.

[R384-100-4. Case Report Contents.

~~Each report of cancer or reportable benign tumor shall include information on report forms provided by the Registry. These reports shall be made in the format prescribed by the Registry and shall include items such as the name and address of the patient, medical history, environmental factors, date and method of diagnosis, primary site, stage of disease, tissue diagnosis, laboratory data, methods of treatment, recurrence and follow up data, and physician names.]~~

R384-100-4. Entities Required to Report Cases.

(1) Each entity involved in the diagnosis, staging, or treatment of cancer and licensed by the state shall report or provide information related to a reportable case to the registry. These entities include:

(a) health care facilities;

(b) health care providers;

(c) hospitals; and

(d) anatomic pathology services or clinical laboratories.

(2) When more than one entity is involved in the diagnosis, staging, or treatment of a reportable cancer case, each entity involved is responsible to report.

[R384-100-5. Agencies or Individuals Required to Report Cases.

~~(1) All hospitals, radiation therapy centers, pathology laboratories licensed to provide services in the state, nursing homes, and other facilities and health care providers involved in the diagnosis or treatment of cancer patients shall report or provide information related to a cancer or reportable benign tumor to the Registry.~~

~~(2) Procedures for reporting:~~

~~(a) Hospital employed registrars shall report hospital cases.~~

- ~~(b) Registrars employed by radiation therapy centers shall report center cases.~~
- ~~(c) Pending implementation of electronic reporting by pathology laboratories, pathology laboratories shall allow the Registry to identify reportable cases and extract the required information during routine visits to pathology laboratories.~~
- ~~(d) If a health care provider diagnoses a reportable case but does not send a tissue specimen to a pathology laboratory or arrange for treatment of the case at a hospital or radiation therapy center, then the health care provider must report the case to the Registry.~~
- ~~(e) If the Registry has not received complete information on a reportable case from routine reporting sources (hospitals, radiation therapy centers, pathology laboratories), the Registry may contact health care providers and require them to complete a report form.]~~

R384-100-5. Entities That May Report Cases.

(1) Any entity operating outside Utah or not licensed by the state and providing screening, diagnosis, staging, treatment, or follow-up of cancer for Utah residents may report or provide information related to a reportable case to the registry. These entities include:

- (a) health care facilities;
- (b) health care providers;
- (c) hospitals; and
- (d) anatomic pathology services or clinical laboratories.

(2) Any entity that is not a healthcare facility, health care provider, hospital, or laboratory but has information related to screening, diagnosis, staging, treatment, or follow-up for Utah residents may report or provide information related a reportable case. These entities may include:

- (a) entities contracted by Utah health care facilities to perform data abstraction and reporting;
- (b) health care claim processors or other organizations that aggregate health or demographic data;
- (c) cancer registries in other states; and
- (d) federal agencies authorized to share data for public health purposes.

[R384-100-6. Time Requirements.

- ~~(1) New Cases:~~
 - ~~(a) Hospitals and radiation therapy facilities shall submit reports to the Registry within six months of the date of diagnosis.~~
 - ~~(b) Other facilities and health care providers shall submit reportable data to the Registry upon request.~~
- ~~(2) Follow-up Data:~~
 - ~~(a) Hospitals and radiation therapy centers shall submit annual follow-up data to the Registry within 13 months of the date the patient was last contacted by hospital or facility personnel.~~
 - ~~(b) Physicians shall submit follow up data to the Registry upon request.]~~

R384-100-6. Case Report Contents.

- (1) The contents of the report for each reportable case shall include identifiable health data. This data may include:
 - (a) facility and provider identifiers;
 - (b) patient identifiers, demographics;
 - (c) medical history and risk factors;
 - (d) date and method of diagnosis;
 - (e) primary site;
 - (f) stage of disease;
 - (g) tissue diagnosis;
 - (h) laboratory data;
 - (i) radiology data;

- (j) dates and methods of treatment; and
- (k) follow-up.
- (2) The reportable data for each case shall include information as specified by the registry, according to the type of entity reporting.
 - (a) Each Utah hospital shall report:
 - i. each data item identified as reportable by SEER and NPCR;
 - ii. text documentation to support reportable data items, as described in guidance from national organizations that set standards for cancer registries; and
 - iii. any additional data items identified as reportable in Utah by the department and the registry.
 - (b) Each Utah health care provider and non-hospital health care facility shall report:
 - i. facility, provider, and patient identifiers;
 - ii. diagnosis;
 - iii. dates, methods, and results of cancer-directed screening and diagnostic procedures provided under their care;
 - iv. dates and methods of treatment provided under their care; and
 - v. follow-up.

- (c) Each Utah laboratory shall report:
 - i. facility, provider and patient identifiers;
 - ii. diagnosis; and
 - iii. results of cancer-directed laboratory examinations, assays, and tests performed or reported by that laboratory.

- (d) Any laboratory outside Utah may report:
 - i. facility, provider, and patient identifiers;
 - ii. diagnosis; and
 - iii. results of cancer-directed laboratory examinations, assays, and tests performed or reported by that laboratory.

(e) Any cancer registry program in another U.S. state and territory may disclose cancer case report information for Utah residents that have been reported to another state, if both programs are party to a data exchange agreement.

(f) Any federal agency authorized to provide data for public health purposes may disclose demographics, follow-up, or other information relevant to reportable cases who are Utah residents.

- (3) The registry provides current, detailed lists of reportable data items and data specifications, which can be obtained:
 - (a) from the registry's website <https://uofuhealth.utah.edu/utah-cancer-registry/>;
 - (b) by contacting the registry by email at ucr.info@hsc.utah.edu; or
 - (c) by contacting the registry by telephone at 801-581-8407.

[R384-100-7. Reporting Format.

~~Reports shall be submitted in the standard format designated by the Registry. Report forms can be obtained by contacting the Registry.]~~

R384-100-7. Format of Case Reports and Procedures for Reporting.

- (1) Each reporting entity shall submit data in an electronic format acceptable to the registry. Information on the acceptable data formats can be obtained:
 - (a) from the registry's website <https://uofuhealth.utah.edu/utah-cancer-registry/>;
 - (b) by contacting the registry by email at ucr.info@hsc.utah.edu; or

NOTICES OF PROPOSED RULES

(c) by contacting the registry by telephone at 801-581-8407.

(2) The format for the data will depend on the type of entity reporting.

(a) Each hospital shall submit an abstract for each reportable case. The abstract shall be structured and coded according to standards agreed upon by national organizations and promulgated by the North American Association of Central Cancer Registries (NAACCR). Each abstract shall pass quality checks, referred to as edits, specified by the registry. A metafile describing standards for the abstract contents and specifications of edits will be updated at least annually and can be obtained from the registry website or by contacting the registry.

(b) Each health care provider and non-hospital health care facility shall submit:

- i. a NAACCR-format abstract;
- ii. an electronic file generated by an electronic health record (EHR) using Health Level 7 (HL7) or other electronic format;
- iii. health care claims in the currently approved electronic format; or
- iv. another electronic format specified by or agreed upon with the registry.

(c) Each laboratory shall report data electronically, using Health Level 7 (HL7) or other electronic format agreed upon with the registry.

(d) Any other entity shall submit data in an electronic format agreed upon with the registry.

(3) Each reporting entity shall submit case reports directly to the registry unless the entity has existing mechanisms of reporting to the department. In the latter case, the reporting entity may submit case report data to the department to be forwarded to the registry.

R384-100-8. Data Quality Assurance.

~~Records maintained by hospitals, pathology laboratories, cancer clinics, and physicians are subject to review by Registry personnel acting on behalf of the Department of Health to assure the completeness and accuracy of reported data.]~~

R384-100-8. Time Requirements.

(1) Each hospital shall submit case reports to the registry within six months of the date of diagnosis or date first seen for the reportable condition.

(a) Initial hospital case reports submitted within six months should include, at a minimum, patient identifiers, and diagnosis.

(b) Each hospital shall submit complete case reports no later than one year after the end of the year of diagnosis.

(c) Each hospital shall submit annual follow-up to the registry within 13 months of the date the patient was last contacted by facility personnel.

(2) Each health care provider and non-hospital health care facility shall report encounters for screening, diagnosis, treatment, or follow-up of a reportable case within six months of the encounter.

(3) Each laboratory shall submit case reports no less frequently than once every six months.

R384-100-9. Data Quality Assurance.

(1) Records maintained by each entity required to report are subject to review by registry personnel acting on behalf of the department to assure the completeness and accuracy of reported data.

(2) Electronic case reports submitted by reporting entities are subject to review by registry personnel for data quality including meeting data quality standards established by national cancer registry

organizations. Each entity required to report is responsible to revise electronic report documents to correct deficiencies identified by registry review or as needed to meet standards.

R384-100-9, R382-100-10. Confidentiality of Case Reports.

All case reports required by this rule are confidential under the provisions of Title 26, Chapter 3, Health Statistics and are not open to inspection except as allowed by Title 26, Chapter 3, Health Statistics. The [R]registry shall maintain [all]each report[s] according to the provisions of Title 26, Chapter 3, Health Statistics.

R384-100-10. Penalties.

~~Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6 and are punishable.]~~

R384-100-11. Non-compliance with Reporting Regulations.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6.

KEY: cancer, reporting requirements and procedures

Date of Enactment or Last Substantive Amendment: 2021 ~~[March 15, 2010]~~

Notice of Continuation: February 25, 2019

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-5-3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R436-18	Filing No. 53434

Agency Information

1. Department:	Health	
Agency:	Vital Records and Statistics	
Room no.:	140	
Building:	Cannon Health	
Street address:	288 N 1460 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 141012	
City, state, zip:	Salt Lake City, UT 84114-1012	
Contact person(s):		
Name:	Phone:	Email:
Linda S. Winger	801-538-6262	Lindaw@utah.gov

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

General Information

2. Rule or section catchline:
R436-18. Adoption Program Procedures, Form Content, and Donations

<p>3. Purpose of the new rule or reason for the change:</p> <p>Changes in Section 78B-6-141 were made during the 2020 General Session 2020 in H.B. 345. The changes provided for an adult adoptee to access an adoption document related to the adoptee with permission from the birth parent. The best mechanism for this new option is to use the Adoption Registry. This rule modifies the rule governing the Adoption Registry to facilitate the new options.</p>
<p>4. Summary of the new rule or change:</p> <p>The new rule modifies the process currently in the old rule to allow for the creation of a user account in the Adoption Registry. It also modifies the options for information giving several new ones that are now allowable such as a non-certified copy of the original birth record and the use of an intermediary for contact between the adult adoptee and birth parent.</p>

Fiscal Information

<p>5. Aggregate anticipated cost or savings to:</p>
<p>A) State budget:</p> <p>The fiscal impact for the state budget is inestimable because there is no way to estimate the number of adult adoptees who would want to register on the Adoption Registry now that they may be able to obtain a non-certified copy of their original birth certificate. The Office of Vital Records and Statistics (Office) is also not able to estimate the number of birth parents who may now want to register on the Adoption Registry given the new options. The new law gives several new options. There is no historical information that can be used to estimate costs or savings.</p>
<p>B) Local governments:</p> <p>The proposed rule change is not expected to have any fiscal impact on local governments because the Adoption Registry is maintained at the state level.</p>
<p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>The proposed rule change is not expected to have any fiscal impact on small businesses because the Adoption Registry is maintained by state government.</p>
<p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>The proposed rule change is not expected to have any fiscal impact on non-small businesses because the Adoption Registry is maintained by state government.</p>
<p>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,</p>

<p>association, governmental entity, or public or private organization of any character other than an agency):</p> <p>The proposed rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the Adoption Registry is maintained by state government.</p>
<p>F) Compliance costs for affected persons:</p> <p>The compliance costs for affected persons are inestimable because there is no way to estimate the number of adult adoptees who would want to register on the Adoption Registry now that they may be able to obtain a non-certified copy of their original birth certificate. The Office is also not able to estimate the number of birth parents who may now want to register on the Adoption Registry given the new options. The new law gives several new options. There is no historical information that can be used to estimate costs.</p>

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0

Net Benefits	Fiscal \$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Health, Richard Sanders, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This proposed rule places no obligations or requirements on business and has no fiscal impact.			
B) Name and title of department head commenting on the fiscal impacts:			
Richard G. Saunders, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 26-2-22	Section 78B-6-144.5	Section 78B-6-144

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2021

10. This rule change MAY become effective on:	07/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Linda S. Winger, Director	Date:	03/30/2021
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R436. Health, Center for Health Data, Vital Records and Statistics. ~~[R436-18. Adoption Program Procedures, Form Content, and Donations.~~

~~R436-18.1. Adoption Program Procedures, Form Content, and Donations.~~

~~(1) In accordance with Section 26-2-22, a birth parent electing to permit identifying information to be shared with an adult adoptee under Section 78B-6-141 shall complete a form provided by the office. The form shall request the following information:~~

- ~~(a) birth parent name;~~
- ~~(b) birth parent contact information;~~
- ~~(c) birth parent medical history;~~
- ~~(d) adult adoptee birth name;~~
- ~~(e) adult adoptee birth date;~~
- ~~(f) adult adoptee birth place and hospital;~~
- ~~(g) name of adoption agency that handled the adoption;~~
- ~~(h) a statement indicating if the birth parent is willing to allow birth parent's identity to be shared with an adult adoptee; and~~
- ~~(i) any additional information through which the birth parent or adult adoptee may be identified.~~

~~(2) In accordance with Section 26-2-22, an adult adoptee electing to obtain identifying information about a birth parent shall complete a form provided by the office. The form shall request the following information:~~

- ~~(a) adult adoptee name;~~
- ~~(b) adult adoptee contact information;~~
- ~~(c) adult adoptee birth name;~~
- ~~(d) adult adoptive name;~~
- ~~(e) adult adoptee current name;~~
- ~~(f) adult adoptee birth date;~~
- ~~(g) adult adoptee birth place and hospital;~~
- ~~(h) names of adoptive parents;~~
- ~~(i) name of adoption agency that handled the adoption;~~
- ~~(j) birth mother current name;~~
- ~~(k) birth mother maiden name;~~
- ~~(l) birth father name; and~~
- ~~(m) any additional information by which the birth parent or adult adoptee may be identified.~~

~~(3) When a birth parent elects to permit identifying information to be shared with an adult adoptee under Section 78B-6-141, the birth parent may choose to not be identified.~~

~~(4) When an adult adoptee obtains identifying information about adult adoptee's birth parent from the office under Section 78B-6-141, the adult adoptee may choose to not contact the birth parent.~~

~~(5) In accordance with Subsection 78B-6-141(3), to change an election or elect to make other information available for inspection by an adult adoptee, a birth parent shall submit a form provided by the office. The form shall request the following information:~~

- ~~(a) birth parent name;~~
- ~~(b) birth parent contact information;~~
- ~~(c) indication of whether the birth parent is requesting to change their election or electing to make additional information available for inspection by the adult adoptee; and~~
- ~~(d) if the birth parent is electing to make other information available for inspection by the adult adoptee, a description of the information.~~

~~(6) In accordance with Section 26-2-22, the release of information by the mutual consent, voluntary adoption registry under Section 78B-6-144 is initiated by qualified applicants completing an Application for Inclusion in the Utah Mutual Consent Voluntary Adoption Registry. The application shall request the following information:~~

- ~~(a) applicant name and relationship to adult adoptee;~~
- ~~(b) applicant contact information;~~
- ~~(c) adult adoptee birth name;~~
- ~~(d) adult adoptee birth date;~~
- ~~(e) adult adoptee birth place and hospital;~~
- ~~(f) birth mother current name and maiden name;~~
- ~~(g) birth father name;~~
- ~~(h) birth parent medical history;~~
- ~~(i) name of adoption agency that handled the adoption;~~
- ~~(j) adult sibling name and contact information, if applicable;~~
- ~~(k) a statement that the applicant consents to be identified to other applicants who are matched as birth family members; and~~
- ~~(l) any additional information by which the birth parent, adult adoptee, or adult sibling may be identified.~~
- ~~(7) In accordance with Section 78B-6-144.5, donations to support adoption records access services may be made by completing a form provided by the office.]~~

R436-18. Adoption Program Procedures, Form Content, and Donations.

R436-18-1. Purpose.

In accordance with Sections 26-2-22, 78B-6-141, 78B-6-144, and 78B-6-144.5, this rule provides procedures for a birth parent, adult adoptee, or adult sibling of an adult adoptee to register with the Utah Mutual Consent Voluntary Adoption Registry as provided under Section 78B-6-144; and to provide for access to adoption documents associated with the adult adoptee's adoption without a court order as provided under Section 78B-6-141 upon consent of the birth parent.

R436-18-2. Definitions.

- (1) Terms used in this rule are defined in Sections 26-2-2 and 78B-6-103.
- (2) Additional terms used in this rule are defined as follows:
 - (a) "Contact information" means name, address, phone number and email that will be used by the office to communicate with the individual.
 - (b) "Registrant identifying information" means information provided when registering with the Adoption Registry, that the registrant may elect to disclose to a matched individual pursuant to Sections 78B-6-141 and 78B-6-144.
 - (c) "Match" means that the department has determined birth parent or adult sibling and the adult adoptee are related.
 - (d) "Registrant" means an adult adoptee, adult sibling of an adult adoptee, or birth parent who is registering on the Utah Mutual Consent Voluntary Adoption Registry.
 - (e) "Utah Mutual Consent Voluntary Adoption Registry" ("Adoption Registry") means the voluntary adoption registry established in Section 78B-6-144.

R436-18-3. Adoption Registry Program Registration Procedures, form content.

- (1) A registrant must meet the following requirements:
 - (a) complete registration online through the Adoption Registry website or submit a paper form provided by the office; and
 - (b) pay the registration fee, which is required regardless of whether a match is made.
- (2) Registrants on the Adoption Registry shall include the following information, to the fullest extent known:
 - (a) current name of registrant;
 - (b) current contact information of registrant, including email address;

- (c) birth mother's name at time of adoptee's birth;
- (d) birth father's name at the time of adoptee's birth;
- (e) birth mother's current name;
- (f) birth father's current name;
- (g) adult adoptee birth name;
- (h) adult adoptee adoptive name;
- (i) adult adoptee current name;
- (j) adult adoptee birth date;
- (i) adult adoptee birth place including city, county, and facility or location of birth;
- (k) name of adoptive parent(s) at time of adoption;
- (l) name of adoption agency or private attorney that handled the adoption; and
- (m) any additional information that will help to identify the birth parent or adult adoptee.
- (3) The registrant may elect to share or receive any of the following information:
 - (a) receive registrant identifying information;
 - (b) share registrant identifying information which may include a method for contact;
 - (c) share name and contact information of an intermediary who will facilitate communication between the matches; and
 - (d) share identifying information but decline to provide a method for contact.
- (4) Birth parents may allow the office to provide the adult adoptee with a non-certified copy of the original birth certificate with the following limitations:
 - (a) the certificate may not include health and medical data gathered for statistical purposes; and
 - (b) the certificate may not reflect identifiable information of an individual that is not registered with the Adoption Registry or who has not consented to the release of an original birth certificate except as provided in (5).
- (5) Birth parents may allow the office to make available for inspection by an adult adoptee other information about the birth parent, including an updated health history.
- (6) Birth parents may prohibit the office from sharing any of their information or documents with the adult adoptee without a court order.
- (7) Adult Adoptees may request a non-certified copy of the original birth certificate.
 - (a) If two birth parents are listed on the original birth certificate, and both birth parents are deceased, the adult adoptee may provide proof of their deaths and request a non-certified copy of the original birth certificate.
 - (b) If only one birth parent is listed on the original birth certificate and that birth parent is deceased, the adult adoptee may provide proof of death and request a non-certified copy of the original birth certificate.
 - (c) If two birth parents are listed on the birth certificate and only one consents to the release of an original birth certificate, the office shall redact the identifying information of the nonconsenting parent and provide a non-certified copy of the original birth certificate to the adult adoptee.
- (8) Adult adoptees may request other non-identifying information, including an updated medical history provided by the birth parent.

R436-18-4. Access to Adoption Documents.

Access to adoption documents is governed by Sections 26-2-22, 78B-6-141, and 78B-6-144. A court order is required for the adoptee to obtain other adoption documents. A court order is required

NOTICES OF PROPOSED RULES

to obtain a non-certified birth certificate if a birth parent has not registered their consent for such.

R436-18-5. Changes to Registrant Information or Elections.

(1) A registrant may change their elections or update their information at any time.

(2) A change or update to the information used for matching that will require a new search may require an update fee.

(3) A change or update made by the registrant online in the Adoption Registry, to their current contact information, registrant identifying information, non-identifying health history, or election choices will not require an update fee.

(4) A change or update requested through the paper process will require an update fee.

R436-18-6. Contact with a Match.

When an adult adoptee, birth parent, or adult sibling obtains identifying information about a match from the office under Sections 78B-6-141 or 78B-6-144 as applicable, the adult adoptee, birth parent, or adult sibling may choose if they contact their match or respond to contact from their match.

R436-18-7. Adoption Program Donations.

In accordance with Section 78B-6-144.5, donations to support adoption records access services may be made by completing a form provided by the office.

KEY: adoptions

Date of Enactment or Last Substantive Amendment: 2021 [November 23, 2015]

Notice of Continuation: November 16, 2020

Authorizing, and Implemented or Interpreted Law: 26-2; 78B-6

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R597-3	Filing No. 53471

Agency Information

1. Department:	Judicial Performance Evaluation Commission	
Agency:	Administration	
Building:	State Capitol Building	
Street address:	350 N State Street	
City, state:	Salt Lake City, UT 84103	
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 or section catchline:
R597-3. Judicial Performance Evaluations
3. Purpose of the new rule or reason for the change:
The reason for the change is to allow one-time, as-needed supplements to the attorney survey pool for judge evaluations for judges eligible for the 2022 retention elections. This change is proposed solely due to the impact of the COVID-19 pandemic.
4. Summary of the new rule or change:
The changes will allow one-time supplements to the attorney survey pool only with attorneys who appeared before a judge eligible for the 2022 retention elections from October 1, 2019, up to, and including, March 31, 2020.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings to the state budget. Current survey contract amounts will not change with this change.
B) Local governments:
There are no anticipated costs or savings to local governments. Local governments do not participate in this process.
C) Small businesses ("small business" means a business employing 1-49 persons):
One small business, located in the state of Maine, conducts the survey but this amendment will not affect cost. There are no anticipated costs or savings to other small businesses, as no other small businesses participate in this process.
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. No non-small businesses participate in this process.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities. Surveyed attorneys will receive the same maximum number of surveys as they would without this rule amendment.

F) Compliance costs for affected persons:
 Evaluated judges affected by this rule amendment may receive a wider pool of attorney evaluators, if necessary, to collect a sufficient sample of attorney respondents. The survey pool for affected judges will include a time period of attorney appearances that is not usually surveyed. However, performance may be more representative of the judge because the time period is pre-pandemic.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:
 The Executive Director of the Judicial Performance Evaluation Committee, Jennifer Yim, 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:

Jennifer Yim, 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 78A-12-204(11)		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Gil Miller, Chairperson	Date:	05/05/2021
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R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

(1) Subject to R597-3-1(3), the evaluation cycles for judges not serving on the supreme court include:

NOTICES OF PROPOSED RULES

(a) the midterm evaluation cycle, beginning upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ending on September 30 of the third year preceding the year of the judge's next retention election; and

(b) the retention evaluation cycle, beginning the day after the midterm evaluation cycle is finished and ending on September 30 of the year preceding the year of the judge's next retention election.

(2) Subject to R597-3-1(3), the evaluation cycles for justices serving on the supreme court include:

(a) the initial evaluation cycle, beginning upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ending on September 30 of the seventh year preceding the year of the justice's next retention election;

(b) the midterm evaluation cycle, beginning the day after the initial evaluation cycle is finished and ending on September 30 of the third year preceding the year of the justice's next retention election; and

(c) the retention evaluation cycle, beginning the day after the midterm evaluation cycle is finished and ending on September 30 of the year preceding the year of the justice's next retention election.

(3) The commission will not conduct evaluations during the first six months of the retention evaluation cycle, in order to allow judges time to incorporate feedback from midterm evaluations into their practices.

R597-3-2. Survey.

(1) For the purpose of judicial performance evaluations, the commission shall:

- (a) conduct surveys as described in R597-3-1; and
- (b) post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(2) For the purpose of judicial performance evaluations, the commission may:

- (a) conduct periodic reviews to ensure compliance with administrative rules governing the survey process; and
- (b) consider narrative survey comments that cannot be reduced to a numerical score.

(3) Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify attorneys who have appeared before the judge during the evaluation cycle a minimum of one hearing or trial.

(4) Identified attorneys may be included in the attorney survey pool for the evaluated judge, except if the attorney has been:

- (a) confirmed as a judge during the evaluation cycle; or
- (b) referred by the judge to the Office of Professional Conduct for allegations of misconduct.

(5) Within 10 business days of the end of the evaluation cycle, the Office of Professional Conduct shall identify all judges who have referred an attorney for allegations of misconduct.

(6) A third-party contractor engaged as a surveyor by the commission shall:

- (a) design the survey to comply with generally-accepted principles of surveying;
- (b) determine the maximum number of survey requests to send to a survey respondent, except that no survey respondent shall receive more than nine survey requests;
- (c) identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5% for each judge who is the subject of a survey;
- (d) survey all attorneys with one trial appearance before the evaluated judge, in accordance with R597-3-2(6)(b);
- (e) consider all attorneys with at least five total appearances before the evaluated judge as eligible to be surveyed;

(f) supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle in the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least five total appearances before the evaluated judge to achieve the required confidence level[-];

(g) due to impacts caused by the COVID-19 pandemic and as a limited suspension of R597-3-1(3), for the evaluations completed for judges eligible for the 2022 retention elections and only as needed per evaluated judge, supplement the survey pool with other attorneys who have appeared before the evaluated judge from October 1, 2019 until and including March 31, 2020 to achieve the required confidence level;

([g]h) distribute the surveys to the appropriate survey respondent;

([h]i) redact all written comments from survey responses to remove any information that identifies the person commenting and deliver the redacted comments to the commission; and

([i]j) redact all written comments from survey responses to remove any information that discloses the identity of any crime victims and deliver the redacted comments to the commission.

(7) The surveyor may distribute surveys in paper form to those survey respondents who do not have access to email.

(8) Prior to the jury being dismissed, the bailiff or clerk in charge of a jury shall:

- (a) collect email addresses from all jurors;
- (b) collect street addresses from all jurors who don't have an email address; and
- (c) transmit all such addresses to the surveyor within 24 hours of collection.

(9) Survey respondents eligible to receive a survey include:

- (a) attorneys, as described in R597-3-2(3) and R597-3-2(4);
- (b) jurors who participate in jury deliberation, where applicable;
- (c) court staff who have worked with the judge, but are not limited to:

- (i) judicial assistants;
- (ii) case managers;
- (iii) clerks of court;
- (iv) trial court executives;
- (v) interpreters;
- (vi) bailiffs;
- (vii) law clerks;
- (viii) central staff attorneys;
- (ix) juvenile probation and intake officers;
- (x) other courthouse staff, as appropriate;
- (xi) Administrative Office of the Courts staff; and
- (xii) treatment providers for specialty courts;
- (d) juvenile court professionals, where applicable:
 - (i) Division of Child and Family Services ("DCFS") child protection services workers;
 - (ii) Division of Child and Family Services ("DCFS") case workers;
 - (iii) Juvenile Justice Services ("JJS") Observation and Assessment Staff;
 - (iv) Juvenile Justice Services ("JJS") case managers;
 - (v) Juvenile Justice Services ("JJS") secure care staff; and
 - (vi) others who provide substantive professional services on a regular basis to the juvenile court.

(10) Any survey respondent may submit a public comment in writing pursuant to section 78A-12-203(2)(c), regardless of the

submission of a survey response containing an anonymous narrative comment.

(11) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(12) The summary form of survey results consists of quantitative survey data in aggregated form.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: 2021[October 13, 2020]

Notice of Continuation: February 5, 2019

Authorizing, and Implemented or Interpreted Law: 78A-12

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-41	Filing No. 53474

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R657-41. Conservation and Sportsman Permits
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Conservation and Sportsman Permits.
4. Summary of the new rule or change:
This rule is being amended to: 1) combine the one-year and three-year programs into a single application process on a three-year term; 2) allow up to two new conservation organizations to enter the conservation permit program

once every three years on a probationary status; 3) provide new groups with 0.5% market share; 4) reduce competitive barrier for entry into the conservation permit program; 5) ensure the use of all eligible conservation permits; 6) clarify that conservation permits can be issued for specific units, subunits and hunt areas; 7) require conservation permits are based on the number of public draw permits; and 8) add language on direct purchases made by conservation organizations.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The proposed rule amendments clarify portions of this rule and combines the one and three year programs, these changes can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
B) Local governments:
Since the proposed amendment provides a simplification of the program and does not require additional restrictions to participate, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
These amendments do not have the potential to create a cost impact to those participating in the conservation and sportsman permit program because it does not require a service from them.

F) Compliance costs for affected persons:			
DWR has determined that this amendment will not create additional costs for those participating in hunting in Utah because the amendments do not require additional services from them.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			

B) Name and title of department head commenting on the fiscal impacts:
Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 23-14-18	Section 23-14-19	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2021

10. This rule change MAY become effective on:	07/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Rory Reynolds, DWR Interim Director	Date:	05/05/2021
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R657. Natural Resources, Wildlife Resources.

R657-41. Conservation and Sportsman Permits.

R657-41-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for auction to the highest bidder at fund-raising events;

(b) sportsman permits;

(c) Special Antelope Island State Park Conservation Permits to a conservation organization for auction to the highest bidder at the annual wildlife exposition held pursuant to Rule R657-55; and

(d) Special Antelope Island State Park Limited Entry Permits to successful applicants through a general drawing conducted by the division.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and (5)(b) for the benefit of species for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit, subunit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season, ~~except area turkey permits are valid during any season option and are valid in any open area during general season hunt~~.

(i) Area conservation permits issued for limited entry units are not valid on cooperative wildlife management units authorized for the same species of wildlife as the area conservation permit.

(ii) Notwithstanding Subsection (2)(a), area conservation permits issued for turkey are not valid during the youth general season hunt unless the holder qualifies as a youth.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded and operated for the purpose of promoting the protection, preservation, and recreational hunting of one or more conservation permit species and has established tax exempt status under 26 U.S.C. Section 501(c)(3), as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

~~(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years for auction to the highest bidder at fund-raising events.~~

~~(f) (e)~~ "Retained Revenue" means 60% of the revenue raised by a conservation organization from auctioning conservation permits that the organization retains for eligible projects, including interest earned thereon less standard banking fees assessed on the account.

~~(g) (f)~~ "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued pursuant to Rule R657-41-12.

~~(h) (g)~~ "Special Antelope Island State Park Limited Entry Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

~~(i) (h)~~ "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection ~~(k)(j)~~, and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

~~(j) "Single-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year for auction to the highest bidder at fund-raising events.~~

~~(k)(i)~~ "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game guidebooks for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer, elk from September 1 through January 15, and bison from August 1 through January 31;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective;

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation Permits and the Special Antelope Island State Park Limited Entry Permits; and

(vi) Rocky Mountain bighorn sheep on any open unit, excluding the Box Elder, Pilot Mountain sheep unit, which is closed to both the Sportsman permit holder and the Statewide conservation permit holder every year.

~~(l)(j)~~ "Permit voucher" or "voucher" means an authorization issued by the division that entitles the designated holder to purchase the hunting permit specified in the authorization.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, distribution, and long-term health;

(b) the hunting and viewing opportunity for the general public, both short and long term; ~~and~~

(c) the potential revenue that will support protection and enhancement of the species; and

(d) the total number of public draw permits available by species on a unit, subunit, or hunt area.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) the potential number of ~~multi-year and single-year~~ conservation permits available for Rocky Mountain bighorn sheep and desert bighorn sheep, assigned to a hunt area or combination of hunt areas, will be calculated based on the number of public draw permits issued the year prior to the permits being awarded using the following rule:

(i) 5-14 public permits = 1 conservation permit, 15-24 public permits = 2 conservation permits, 25-34 public permits = 3 conservation permits, 35-44 public permits = 4 conservation permits, 45-54 public permits = 5 conservation permits, 55-64 public permits

= 6 conservation permits, 65-74 public permits = 7 conservation permits and >75 public permits = 8 conservation permits.

(b) the potential number of ~~[multi-year and single year]~~conservation permits available for the remaining conservation permit species, for any unit, sub-unit or hunt area, will be calculated based on the number of public draw permits issued the year prior to the permits being awarded using the following rule:

(i) 11-30 public permits = 1 conservation permit, 31-50 public permits = 2 conservation permits, 51-70 public permits = 3 conservation permits, 71-90 public permits = 4 conservation permits, 91-110 public permits = 5 conservation permits, 111-130 = 6 conservation permits, 131-150 public permits = 7 conservation permits and >150 public permits = 8 conservation permits.

(4) The number of conservation permits may be reduced if the number of public permits declines during the time period for which ~~[multi-year]~~conservation permits were awarded.

(5) The actual number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(6) Area conservation permits shall be approved by the Wildlife Board in a separate process from approving the number of public drawing permits.

(7) One sportsman permit shall be authorized for each statewide conservation permit authorized.

~~[(8) All area conservation permits are eligible as multi-year permits, except the division may designate some area conservation permits as single year permits based on the applications received for single year permits.~~

~~[(9) All statewide permits will be multi-year permits.]~~

R657-41-4. Eligibility for Conservation Permits.

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations for auction to the highest bidder at fund-raising events and through other authorized means of sale.

(2) To be eligible for ~~[multi-year]~~conservation permits, a conservation organization must~~[have generated in conservation permit sales during the previous three year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.];~~

(a) satisfy the definition of a qualifying conservation organization;

(b) complete the application requirements in Section R657-41-5; and

(c) remain in good standing during the previous three-year term of participation and not subject to any suspension or revocation proceeding under Section R657-41-13.

(3) Conservation organizations applying for ~~[single year]~~conservation permits may not~~[:]~~

~~[(a) bid]apply for or obtain conservation permits if any employee, agent, officer, or board of directors member of the conservation organization is an employee, agent, officer, or board of directors member of any other conservation organization that is~~[submitting a bid for single year conservation permits; or~~~~

~~[(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:~~

~~[(i) which permits will be sought by a bidder;~~

~~[(ii) what amounts will be bid for any permits; or~~

~~[(iii) trading, exchanging, or transferring any permits after permits are awarded] also applying to participate in the program.~~

R657-41-5. Applying for Conservation Permits.

(1)(a) Applications to participate in the ~~[multi-year]~~conservation permit program will be accepted on a three-year application cycle uniformly applicable to all conservation organizations.

(b) A conservation organization wishing to apply for ~~[multi-year]~~conservation permits must submit a complete application to the division by August 15 of third year of the application cycle.

~~[(e) Conservation organizations wishing to apply for one year conservation permits must do so by August 15 annually.~~

~~[(d)](c) Only one application per conservation organization may be submitted.~~

~~[(e)d] Multiple chapters of the same conservation organization may not apply individually.~~

~~[(f) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.]~~

(2) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax - exempt status under 26 U.S.C. Section 501(c)(3), as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

~~[(3) If applying for single year conservation permits, a conservation organization must also include in its application:~~

~~[(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates will be raised from auctioning a permit;~~

~~[(b) certification that there are no conflicts of interest or collusion in submitting bids, as prohibited in R657-41-4(3);~~

~~[(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, administrative action under R657-41-13, disqualification from bidding for five years or more, or the filing of criminal charges; and~~

~~[(d)](c) evidence that the application and bid has been approved by the board of directors or other necessary authority from the bidding conservation organization; and~~

~~[(e)](f) a certification from the applicant that they have not consulted with any other participating conservation organization regarding the conservation permits they intend to acquire.~~

~~[(4)3] An application that is incomplete or completed incorrectly may be rejected.~~

~~[(5)4] The application of a conservation organization for conservation permits may be denied by the division for:~~

(a) failing to fully and accurately report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23, Wildlife Resources Code of Utah,~~[of the Utah Code]~~, Title R657~~[of the Utah Administrative Code]~~, a division guidebook, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

([6]5) Application denials may be appealed to the division director prior to the permit selection process described in Section R657-41-7.

R657-41-6. ~~Awarding Single Year~~ Approving New Conservation Permits Organizations for the Program.

(1) ~~The division shall recommend the conservation organization to receive each single year~~ (a) New applicants to the conservation permit ~~based on~~ program shall follow the same three-year application cycle established in Subsection R657-41-5(1).

~~(a)(i) the bid amount pledged to the species; and~~
~~(ii) the bid amount pledged to the species, adjusted, when applicable, by:~~

~~(A) the performance of the organization over the previous two years in meeting proposed bids;~~

~~(B) 90% of the bid amount; and~~

~~(C) the organizations maintaining a minimum two year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.]~~

(b) If multiple new conservation organizations submit valid applications during a single three-year application cycle:

(i) a maximum of two new organizations will be selected; and

(ii) [If two or more conservation organizations are tied using the criteria in Subsection (a), the following factors may be used to award the single year conservation permit:

(i) closeness of the organization's purpose to the species of the permit; and

(ii) geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw the application for any given permit and assign it to or exchange it with another conservation organization eligible to receive the permit without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws its bid for a conservation permit after being selected by the division to receive it, and the bid is awarded to another organization at a lower amount, the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits.

(4) The Wildlife Board may authorize a conservation permit to a conservation organization other than the one recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) ~~conservation organizations will be selected based upon an evaluation of their historical [contribution of the organization] contributions to [the] conservation [of wildlife] permit species in Utah[?].~~

(2)(a) Conservation organizations accepted into the conservation permit program for the first time will be awarded 0.5% in market share, as determined in Section R657-41-7.

(b) Market share awarded to new applicants will be drawn from each participating conservation organizations' market share in proportion to that organization's total market share.

(c) Newly accepted conservation organizations shall participate in the first three-year term on a probationary status.

(d) ~~previous performance of the] During their probationary term, a conservation organization[; and] must:~~

(i) sell all conservation permits each year at a hunt-related banquet or through an online auction with prior division approval;

~~(e) overall viability and integrity of]~~

(ii) diligently advertise and market each permit opportunity;

(iii) maintain a minimum of 75% or the originally awarded market share at the end of the three-year term; and

(iv) complete all mandatory reporting for auditing purposes.

(e) The division may deny an application from a conservation organization based upon their failure to meet the probationary requirements.

(f) Application denials may be appealed to the Division Director prior to the permit selection process described in Section R657-41-7.

(3)(a) A conservation organization that was once a program participant, but left the program while in good standing, may be reinstated during the three-year permitting cycle immediately following their departure from the program with the full market share the conservation permit organization had at the time they left the program.

([5]b) ~~The total of all bids for permits awarded to any one] A conservation organization [shall not exceed \$20,000 the first year an organization receives permits.~~

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.] reentering the program under the provisions of (3)(a):

(i) will receive market share drawn from each participating conservation organization in proportion to that organization's market share; and

(ii) may reenter the program regardless of the number of applications accepted from new conservation organizations under Subsection R657-41-1(b).

R657-41-7. Awarding ~~Multi-Year~~ Conservation Permits.

(1)(a) Distribution of ~~[multi-year] conservation permits~~ will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase ~~[multi-year] permits~~ at an assigned value.

(b) Conservation organizations may not consult or coordinate with other conservation organizations regarding which conservation permits they intend to acquire prior to the permit selection process.

(2) ~~[Multi-year permits] Permits~~ will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available ~~[as multi-year permits after subtracting the proposed number of single year permits].~~

(a) Season types for ~~[multi-year] area conservation permits~~ for elk on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- multi-season;

(ii) second permit -- any-weapon;

(iii) third permit -- any-weapon;

(iv) fourth permit -- archery;

(v) fifth permit -- muzzleloader;

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- (vi) sixth permit -- multi-season;
- (vii) seventh permit -- any-weapon; and
- (viii) eighth permit -- any-weapon.

(b) Season types for [multi-year] area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:

- (i) first permit -- hunter's choice of season;
- (ii) second permit -- hunter's choice of season;
- (iii) third permit -- muzzleloader;
- (iv) fourth permit -- archery;
- (v) fifth permit -- any-weapon;
- (vi) sixth permit -- any-weapon;
- (vii) seventh permit -- muzzleloader; and
- (viii) eighth permit -- archery.

(c) Notwithstanding the availability of multiple seasons, an any-weapon permit opportunity offered in Subsections (3)(a) and (3)(b) is restricted to a single season, which the recipient of the permit must designate prior to receiving the permit.

(4) The division will assign a credit amount for each [multi-year] permit based on the average return for the permit during the previous three-year period. If a history is not available, the value will be estimated.

(5) The division will calculate the market total for the permit draft by summing all credit amounts from available conservation permits.

(6)(a) The division will calculate a market share for each eligible conservation organization applying for [multi-year] permits.

(b) Market share will be calculated and determined based on:

- (i) the conservation organization's previous three years performance;
- (ii) all conservation permits [~~single and multi-year~~] issued to a conservation organization;
- (iii) the percent of conservation permit revenue raised by a conservation organization during the three-year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for [multi-year] conservation permits.

(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the market total [~~annual value of all multi-year permits~~].

(8)(a) If substantial changes to a hunt boundary or season date of a conservation permit occur during its three-year term, the division may cancel the permit for the remainder of the three-year term and assign an average sales price using prices from prior years within its three-year term.

[(8)](b) If minor changes to a hunt boundary or season date of a conservation permit occur during its three-year term, the division may:

- (i) cancel the permit for the remainder of the three-year term and assign a sales price under Subsection (8)(a); or
- (ii) allow the conservation organization to sell the permit for the remainder of the three-year term.

(9) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:

- (a) groups will be ordered based on their percent of market share;
- (b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;

(c) no group can have more than three positions in the selection order; and

(d) the selection order will be established as follows:

(i) the group with the highest market share will be assigned the first position and 10% will be subtracted from their total market share;

(ii) the group with the highest remaining market share will be assigned the second position and 10% will be subtracted from their market share; and

(iii) this procedure will continue until all groups have three positions or their market share is exhausted.

[(9)]10) At least one week prior to the [multi-year] permit selection meeting, the division will provide each conservation organization applying for [multi-year] permits the following items:

- (a) a list of [multi-year] permits available with assigned value;
- (b) documentation of the calculation of market share;
- (c) credits available to each conservation group to use in the selection process;
- (d) the selection order; and
- (e) date, time and location of the selection meeting.

~~[(10) Between establishing the selection order and the selection meeting, groups may trade or assign selection positions, but once the selection meeting begins selection order cannot be changed.]~~

(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.

(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.

(13) A conservation organization may not exceed its available credits, except a group may select their last permit for up to 10% of the permit credit amount above their remaining credits.

~~[(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where the final assignment of permits is made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.]~~

~~[(15)](14) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.~~

~~[(16)]15) Conservation organizations may not trade or transfer [multi-year] permits to other organizations once assigned by the Wildlife Board.~~

~~[(17)]16) Conservation organizations failing to comply with the reporting requirements in any given year during the [multi-year] period may lose the [multi-year] conservation permits for the balance of the [multi-year] award period.~~

~~[(18)]17) If a conservation organization is unable to complete the terms of auctioning or otherwise selling assigned permits, the permits will be returned to the regular public drawing process for the duration of the [multi-year] allocation period.~~

R657-41-8. Distributing Conservation Permits.

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) Conservation organizations receiving the opportunity to distribute permits must ensure the permit opportunities are marketed, auctioned, and distributed by lawful means.

(b) Conservation permit vouchers may not be purchased or redeemed by officers, agents, directors or employees of a conservation permit organization unless:

- (i) the voucher was sold at an in-person banquet or fundraiser hosted by the conservation organization;
- (ii) the sale was administered by an auctioneer; and
- (iii) the sales process was administered in a manner so as to secure fair market value for the voucher.

(3)(a) The conservation organization must:

(i) obtain the following information at the time of sale:

- (A) full name of the successful bidder;
- (B) date the permit opportunity is auctioned; and
- (C) winning bid amount for that permit opportunity;

(ii) submit the information required in Subsection (3)(a)(i) to the division within 10 days of the event where the permit opportunity is auctioned to the highest bidder; and

(iii) identify the individual who is authorized to redeem the conservation permit voucher and submit it to the division prior to the individual attempting to redeeming the voucher.

(b) The division will not issue a conservation permit unless required information about the winning bidder and authorized recipient of the voucher is first received by the division.

(c)(i) an absentee bidder may only use an agent or representative to bid on a conservation permit opportunity on their behalf if authorized by the conservation organization.

(ii) A winning bid offered by an agent or representative on behalf of an absentee bidder legally obligates the absentee bidder to satisfy the bid obligation submitted by the representative.

(iii) For the purposes of this rule, an absentee bidder is considered the successful bidder when the winning bid is offered by their agent or representative.

(4) If the successful bidder or a person designated by the successful bidder to receive a conservation permit voucher fails to pay the conservation organization the winning bid amount that secured the permit opportunity, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the permit opportunity.

(5)(a) If, for any reason, the successful bidder elects not to personally use a conservation permit opportunity, they may assign that opportunity to another person, provided:

- (i) the conservation organization is notified of the assignment;
- (ii) the original winning bid amount for the permit opportunity is received in full by the conservation organization and not decreased;
- (iii) the conservation organization handles and otherwise uses the entire winning bid amount consistent with the requirements in Section R657-41-9; ~~and~~

(iv) the successful bidder executes an affidavit verifying they are not profiting from the assignment; ~~and~~

~~[(A)]v~~ ~~[For purposes of Subsection (iv), "profiting" does not include a reasonable fee]~~ the successful bidder separates all fees for guiding services [provided in conjunction] from any transaction associated with assigning the [assigned] permit opportunity.

(b) If a person assigned a permit opportunity by the successful bidder or a person possessing a permit voucher is unable to

use the permit opportunity for any reason, including obtaining another Utah permit for the same species, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the opportunity, provided:

(i) the conservation organization selects the new recipient of the permit opportunity;

(ii) the amount of money received by the division for the permit opportunity is not decreased;

(iii) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit opportunity consistent with the requirements in Section R657-41-9;

(iv) the conservation organization and the holder of the permit opportunity execute an affidavit verifying neither is profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(6)(a) Except as otherwise provided under Subsections (4) and (5), neither the conservation organization, successful bidder, successful bidder's assignee, nor the holder of a conservation permit voucher may offer for sale, sell, or transfer the rights to that designation to any other person.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except :

(a) two elk permits may be obtained, provided one or both are antlerless permits; and

(b) turkey.

(c) A person may obtain both a desert bighorn ram permit and rocky mountain bighorn ram conservation permit in a single year.

(8) The person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

KEY: ~~wildlife, wildlife permits, sportsman, conservation~~ permits
Date of Enactment or Last Substantive Amendment: ~~2021 July 22, 2019~~

Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-60	Filing No. 53475

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301
City, state, zip:	Salt Lake City, UT 84114-6301

Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R657-60. Aquatic Invasive Species Interdiction
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to aquatic invasive species.
4. Summary of the new rule or change:
The proposed amendments to this rule remove the 140 degrees Fahrenheit requirement from the definition and allows for a Dip Tank to be used to de-contaminate watercraft.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The proposed rule amendment clarifies a definition used for de-contaminating watercraft. Therefore, DWR has determined that these amendments do not create a cost or savings impact to the current state budget or DWR's budget.
B) Local governments:
The proposed amendments do not directly nor indirectly impact local governments. Therefore, this filing does not create any direct cost or savings impact to local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those wishing to boat in Utah because they do not add any additional services or requirements to boat owners.

F) Compliance costs for affected persons:

DWR has determined that this amendment will not create any additional costs to those participating in launching watercrafts in Utah because it does not inflict any additional cost requirements on them.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:	
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.	
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:	
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.	
B) Name and title of department head commenting on the fiscal impacts:	
Brian Steed, Executive Director	

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 23-14-18	Section 23-14-19	Section 23-27-401

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2021

10. This rule change MAY become effective on:	07/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Rory Reynolds, DWR Interim Director	Date:	05/05/2021
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**R657. Natural Resources, Wildlife Resources.
R657-60. Aquatic Invasive Species Interdiction.
R657-60-1. Purpose and Authority.**

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-27-102.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" or "Decontaminated" means to comply with one of the following methods:

(i) if no adult mussels are attached to the conveyance after exiting the water body, an owner or operator may self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than seven days in June, July and August; 18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(D) if all water cannot be drained from the conveyance, or the conveyance has a complex water or mechanical system that the division determines poses a significant risk that Dreissena mussels could remain on the conveyance after the dry time identified in Subsection (C), fulfilling the requirements of Subsection (A) and (B) to the extent practicable and drying the conveyance for no less than 30 days;

(ii) professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) using a professional decontamination service approved by the division to ~~apply scalding water, 140 degrees Fahrenheit, to completely wash the equipment or conveyance and~~ flush any areas where water is held, including ballast tanks, bilges, livewells, and motors, and to apply scalding water to all conveyance and equipment surfaces at the temperature and immersion time necessary for 100 percent mussel mortality as provided in the Uniform Minimum Protocols and Standards for Watercraft Inspection and Decontamination Programs for Dreissenid Mussels in the Western United States; and

(B) complete a mandatory 30 day dry time after the scalding water wash is completed if the division determines that, due to the complexity of water or mechanical systems on the conveyance, a significant risk that Dreissena mussels remain present on the conveyance regardless of receiving a scalding water wash described in Subsection (A); or

NOTICES OF PROPOSED RULES

(iii) complying with all protocols identified in a certificate of registration.

(c) "Detected Water" or "Detected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated in two consecutive sampling events using visual identification or microscopy and the results of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(d) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(e) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(f) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(g) "Facility" means a structure that is located within or adjacent to a water body.

(h) "Highway" has the same meaning as Subsection 72-1-102(7).

(i) "Infested Water" or "Infested" means a water body, facility, water supply system, or geographic region where the presence of multiple age classes of attached Dreissena mussels is indicated in two or more consecutive sampling events using visual detection or microscopy and the result of each sampling event is confirmed in two polymerase chain reaction tests, each conducted at independent laboratories.

(j) "Juvenile or adult Dreissena mussel" means a macroscopic Dreissena mussel that is not a veliger.

(k) "Quarantine" means imposing a required minimum period of time where a conveyance must stay at a predetermined location in order to minimize the risk that Dreissena mussels are spread.

(l) "Suspected Water" or "Suspected" means a water body, facility, or water supply system where the presence of a Dreissena mussel is indicated through a single sampling event using visual identification or microscopy and the result of that sampling event is confirmed in two independent polymerase chain reaction tests, each conducted at independent laboratories.

(m) "Veliger" means a microscopic, planktonic larva of Dreissena mussel.

(n) "Vessel" has the same meaning as Subsection 73-18-2(19).

(o) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(p) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(q) "Water supply system" does not include a water body.

KEY: fish, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: 2021 [September 8, 2020]

Notice of Continuation: July 19, 2018

Authorizing, and Implemented or Interpreted Law: 23-27-401; 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R661-24	Filing No. 53472

Agency Information

1. Department:	Navajo Trust Fund	
Agency:	Trustees	
Street address:	151 E 500 N	
City, state and zip:	Blanding, UT 84511	
Contact person(s):		
Name:	Phone:	Email:
Maury Bergman	435-678-1461	mbergman@utah.gov
Tony Dayish	435-678-1468	tdayish@utah.gov

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

General Information

2. Rule or section catchline:
R661-24. Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program
3. Purpose of the new rule or reason for the change:
Rule R661-4 expired on 03/01/2021. The purpose of this rule is to reinstate the expired rule.
4. Summary of the new rule or change:
The objective of the program is to assist San Juan County, Utah Navajo college students with scholarships and financial aid by matching other college financial assistance or funding sources. These requirements and guidelines already existed under Rule R661-6 so there will be no major changes due to this new rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
All requirements listed in Rule R661-24 previously existed under the 120-day emergency Rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact to the state budget with the new rule. (EDITOR'S NOTE: The corresponding emergency Rule R661-24 that is effective as of 04/14/2021 was published in the May 1, 2021, Bulletin under Filing No. 53391.)

B) Local governments:			
All requirements listed in Rule R661-24 previously existed under the 120-day emergency Rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact to local governments with the new rule.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
All requirements listed in Rule R661-24 previously existed under the 120-day emergency rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no costs or savings to small businesses with the rule.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
All requirements listed in Rule R661-24 previously existed under the 120-day emergency Rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact on non-small businesses with the new 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):			
All requirements listed in Rule R661-24 previously existed under the 120-day emergency Rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact on persons, non-small businesses, state or local government entities with the new rule.			
F) Compliance costs for affected persons:			
All requirements listed in Rule R661-24 previously existed under the 120-day emergency Rule R661-24 and Rule R661-6. The rule text remains the same. Since the content of the rule has not changed, there will be no compliance costs for affected persons with the new rule.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Trust Fund Administrator of the Utah Navajo Trust Fund, Tony Dayish, 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 new fiscal impact will result under this proposed rule because the text remains the same as Rule R661-6.			
B) Name and title of department head commenting on the fiscal impacts:			
Tony Dayish, Administrator			

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 51, Chapter 10		

Public Notice Information

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

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Maury Bergman, Finance Manager	Date:	05/03/2021
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R661. Navajo Trust Fund, Trustees.
R661-24. Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program.
R661-24-101. Objective.

(1) The Higher Education Financial Assistance Scholarship Program ("the Program") includes both the UNTF Higher Education Scholarship Fund and the UNTF Endowment Fund. The objective of the Program is to assist San Juan County, Utah, Navajo college students with scholarships by matching other college financial assistance or funding sources.

(2) UNTF higher education financial assistance and scholarship funding is available to eligible San Juan County, Utah, Navajo students for studies at institutions of their choice.

(3) The UNTF Endowment Education Fund was established in 1994 to provide college financial assistance to eligible San Juan County, Utah, Navajo College students attending college in San Juan County, Utah, such as Utah State University-Eastern-Blanding Campus. The Endowment Fund was established as a result of a special U. S. Dept. of Education grant which brought together five contributors/partners: UNTF, USU-Eastern, Ute Mountain Tribe, Calvin Black Foundation, and a U.S. Government grant regarding Native American education.

(a) UNTF continues to participate in the Endowment Fund even though the scheduled twenty (20) year period maturity occurred in 2014 due to the good growth of the Fund.

(b) Funds from the Endowment Fund yearly allocation must be exhausted before regular UNTF funds are utilized. The Endowment Fund allocation to UNTF is based on the Endowment's previous year's earnings from investment.

R661-24-201. Definitions.

(1) "College" means any college, university, technical school, or institution of higher learning after high school (post-secondary) level.

(2) "Financial Assistance" means UNTF financial assistance for college expenses.

(3) "Academic Term" means the period of time that the college uses to begin and end educational sessions such as a semester, quarter, term, etc.

R661-24-301. Eligibility.

(1) Applicants must meet the UNTF residency requirement in accordance with the UNTF Residency Rule R661-3-101 every three years.

(a) The residency requirement may have to be renewed more often than three years if a name change or record change becomes essential.

(2) The applicant must be enrolled in at least six (6) credit hours of approved college courses during the regular academic term. Course work must apply towards an approved degree or certificate program from an accredited post-secondary institution.

(a) Repeated and/or audited courses will not be funded by UNTF. If a student changes majors and has to retake lower level courses, only one transition academic term will be paid by UNTF.

(b) The eligible San Juan County, Utah Navajo College student must maintain a 2.0 grade point average on a 4.0 grade point scale. UNTF has the discretion to provide incremental scholarship bonuses to students who obtain a GPA greater than 2.0

(i) Official transcripts are required at the beginning of every fall semester; thereafter, grade reports from the previous academic term shall be submitted to UNTF following the completed academic term.

(ii) Awards are made on a first-come, first-served basis.

(c) If a student's GPA falls below 2.0, UNTF will provide a warning letter to the student and place the student on probation. If a student's GPA is below 2.0 for two consecutive semesters, the student will be ineligible for any further UNTF assistance unless the student is able to bring their GPA to 2.0 or above using their own resources or non-UNTF resources.

(3) San Juan County, Utah, Navajo Students are eligible for UNTF assistance in obtaining a One-year or two-year Certificate, Associates, Baccalaureate, Masters, or Doctorate degree.

(a) Eligible San Juan County, Utah, Navajo College Students shall declare a major in a given field no later than two (2) years after commencement of higher-level education so that proper counseling and academic advice can be provided

(b) Only one bachelor's degree will be funded by UNTF, unless the second degree is closely related to the first degree and if the same prerequisite general education classes can be used.

(c) The limit for Associates Degree is 75 credit hours and 145 credit hours for a Bachelors' Degree.

(d) A "degree contract" must be agreed upon between the college and the student and submitted to UNTF to receive funding. A "degree contract" is a list of core classes and prerequisites required to obtain a degree.

(e) Only one one-year or two-year certificate, or one Associate Degree will be funded by UNTF, unless the certificate or Associate Degree are related to and are part of a program that leads to a further certificate or degree.

(f) UNTF will fund a certificate or degree program for a student, but not both.

(4) Graduate students must submit a letter of acceptance and be eligible for UNTF Scholarship, and must carry the minimum graduate studies requirement of the College. An exception will be made if the course work is one of a special requirement for the professional track and/or tenure such as a special license or certification.

(5) High School Concurrent Enrollment Program students must meet the eligibility criteria regarding all requirements for the UNTF Higher Education Scholarship and Financial Assistance Program with the following modifications:

(a) Applicant shall provide a letter of recommendation from his/her high school counselor or school officials for concurrent

enrollment program participation. The letter should address the student's ability to meet the demands of concurrent enrollment.

(b) Students must maintain at least a 3.0 grade point average (GPA) in their high school studies to be eligible for this program.

(c) The maximum amount of UNTF assistance available annually is determined by the UNTF Board. The UNTF assistance can be increased by the UNTF Board of Directors based on the Utah colleges cost data that is maintained by the State of Utah-Department of Education.

(6) On-line or correspondence courses may be taken as long as earned credits are applied to a degree program or a recognized certification program under UNTF funding guidelines.

(a) All UNTF Higher Education Scholarship eligibility requirements must be met by the applicant before any assistance toward the on-line/correspondence courses will be approved.

(b) Students attending on-line/correspondence courses shall be eligible for UNTF funding if enrolled in at least three (3) credit hours of approved college course work.

R661-24-401. Funding.

(1) UNTF is not a primary funding source, UNTF funds are supplemental to other scholarship and financial aid resources. The applicant must submit applications and award or denial letters from other financial aid resources to the UNTF office to prove that the applicant has applied for other sources of funding. UNTF will fund a student based on credit hours. The maximum amount of funding available per academic term is determined by the UNTF Board.

(2) The amount of funding afforded to each eligible San Juan County, Utah, Navajo College student per academic term is determined by the number of credit hours and a financial needs analysis. The award amount per credit-hour-group will be determined by UNTF as part of each year's annual budget.

(a) Should a student drop a class, the student's funding for the next academic term shall be assessed a decreased funding adjustment, unless a refund is properly made by the student.

(i) In order to facilitate the UNTF award on a timely basis toward the student's next academic term, the student must submit a list of the courses from pre-registration to the UNTF Education Specialist. The information will help determine the actual award amount based on the number of hours or credit units to be carried in the next academic term.

(b) Financial Needs Analysis

(i) Applicants must file a FAFSA Grant application with the U.S. Department of Education in order to determine their financial aid needs from UNTF.

(ii) It is the responsibility of the institution's Student Financial Aid Office to complete the needs analysis, and to request an award from UNTF based upon the determined need. When the financial needs determination is completed, the student must complete a UNTF financial assistance application which can be obtained from the UNTF Higher Education Scholarship.

(iii) Upon completion of the needs analysis by the Office of Student Financial Aid, the UNTF Education Specialist will evaluate the level of financial assistance requested, matching resources, and make the appropriate award amount.

(iv) Students with a "No Need" determination (as determined by the educational institution) may be awarded UNTF funding if the financial aid officer at the institution determines the parents cannot or are unwilling to provide the family contribution to meet the student's need as determined by the federal financial aid application analysis.

(A) The UNTF "No Need" contribution amount is limited to the Expected Family Contribution (EFC amount) however, the

maximum limits will be no more than 75% of the normal scholarship award amounts.

(B) If financial assistance calculates out at less than \$40.00 for "No Need" it will not be awarded

(C) The EFC amount is determined by the Federal Student Aid program, an office of the U.S. Department of Education, when a student applies to the FAFSA (Free Application for Financial Student Aid) program.

(v) If the student does not qualify for FAFSA and the EFC cannot be determined; and if the student is otherwise eligible for UNTF assistance an \$800.00 grant amount may be awarded for the last academic term prior to graduation for a bachelor's degree or higher degree.

(3) All student applicants must also apply to the Navajo Nation Office of Scholarship and Financial Assistance (ONNSFA). UNTF coordinates with ONNSFA to exchange information regarding match funding with UNTF and other acquired resource funds. All Student applicants to the UNTF funds must sign the UNTF Consent Form (UNTF Form R6101-2 Consent Form) that authorizes UNTF to contact ONNSFA to verify funding verification.

(4) The UNTF Education Specialist will process the required and appropriate funding documentation to the UNTF Financial Manager for funding disbursement. The UNTF Financial Manager shall maintain accounts, historical and concurrent, of all UNTF-funded students for proper record keeping and reporting. UNTF check(s) will be mailed to the institution's Student Financial Aid Office. No payment(s) will be made directly to a student.

(5) All Post-Graduate students must abide by appropriate application procedures in accordance with post-graduate study program requirements. Supplemental funding from other sources is a major requirement in participating in the graduate-studies program, including program funds from the Office of Navajo Nation Scholarship and Financial Aid (ONNSFA). Other considerations regarding special studies as applied to the undergraduate program also apply.

(6) UNTF Higher Education Scholarship funds may not be used to pay loans, including education loans; purchase(s) of personal belongings not directly associated with higher education studies; encumbrances from previous year's college/university attendance; and other expenses for which the funds are not intended.

(a) Students withdrawing from classes are required to refund the UNTF awards for that academic term. UNTF reserves the right to adjust awards for any refund amounts that were not paid.

(b) The penalty for misspent or misused UNTF scholarship funds will include placing the student on ineligible status for a one (1) year period. The student may re-establish his/her eligibility for UNTF funding by successfully completing a full academic year without the financial assistance of UNTF.

(c) Misuse or false acquisition of scholarship or emergency assistance funds by the student shall be subject to repayment to UNTF Higher Education Scholarship Program via standard collection procedures, which may include legal action.

R661-24-501. Application Schedule and Requirements.

(1) The UNTF Higher Education Scholarship Program observes and follows a funding schedule compatible with Federal, State, Tribal, and private agencies. Students must carefully observe these schedules to allow for the most timely funding application consideration, especially application deadline dates. Matching funds are critical and essential, since UNTF funding is supplemental.

(2) Students should observe the institution's academic year schedule and early funding application submittal to UNTF to ensure proper funding review and consideration.

R661-24-601. Student Recipient Obligations.

(1) UNTF-funded students must maintain acceptable academic progress in conformance with academic standards set by UNTF and the participating institutions. UNTF requires the funded student to maintain a minimum grade point average (GPA) of 2.0 to be eligible for continued funding consideration.

(2) Official transcripts shall be provided to UNTF at the commencement of the each fall academic term.

(a) If a student fails to provide an official transcript, UNTF funds will be discontinued.

(b) A student's failure to provide required funding documents is not grounds for grievance action on the part of the student.

(3) In order to receive UNTF Funding the Student shall execute all necessary documentation required by the College to permit the College to release the Student's official transcript and degree information to UNTF.

R661-24-701. Program Effectiveness Metrics.

(1) Scholarship recipient progress shall be tracked by UNTF staff.

(2) UNTF staff shall report to the UNTF Board:

(a) When a recipient completes a certificate or degree program; and

(b) The time it took the recipient to complete the program.

R661-24-801. Grievance and Appeal Procedures.

(1) Grievance and Appeals Procedures: A student applicant may file a grievance with the UNTF Education Specialist if the student disagrees with the decision rendered regarding his/her funding.

(a) The written grievance shall be submitted to the Education Specialist within fifteen (15) calendar days from the date the adverse decision was mailed to the student.

(b) The written grievance statement must contain a justification for re-consideration of the Education Specialist's decision, including attachment of documents which may support such justification.

(2) The Education Specialist shall report receipt of the written grievance to the UNTF Financial Manager for review. The UNTF Financial Manager shall make a determination regarding the substance of the grievance within fifteen (15) calendar days of receipt of the written grievance.

(a) If the grievant is dissatisfied with the Financial Manager's decision, an appeal may be filed with UNTF.

(i) To appeal the decision of the UNTF Financial Manager, an applicant may submit a written request for a hearing to the UNTF Scholarship Appellate Committee within fifteen (15) calendar days from the date the adverse decision was mailed to the student, via the Education Specialist.

(A) The Applicant must include a written justification statement setting forth with specificity the reason(s) why the decisions made by the Higher Education Specialist and the Financial Manager should be reversed.

(B) The Applicant shall include copies of all documentation supporting the justification identified in the Applicant's statement.

(ii) The Appellate Committee must commence a hearing with within fifteen (15) calendar days of the receipt of the request.

(iii) The student shall be notified in writing by certified mail fifteen (15) calendar days prior to the hearing.

(iv) A decision by the Appellate Committee shall be rendered within fifteen (15) calendar days after the Committee hearing.

(3) Appellate Committee

(a) The Appellate Committee is comprised of: 1) two members of the UNTF Dine' Advisory Committee, 2) the UNTF Administrator, 3) a college student, and 4) a representative from another state agency or institution of higher learning.

(b) The Appellate Committee may choose not to hear a case if the grieving party has not submitted a justification in writing with appropriate and necessary supportive documentation.

(4) Appellate Committee Hearing Procedures

(a) Attorneys, court advocates, or any type of legal representation are not allowed in the Appellate Committee Hearing. Family members or other persons are not allowed in the Committee Hearing. The attendees of the hearing will consist of the Appellate Committee members, the UNTF Education Specialist, and the Applicant (Grievant).

(b) A letter will be sent to the UNTF Education Specialist and the Student/Grievant of the Appellate Committee's decision on the matter. This will be the final decision and final step of the UNTF Appeal and Grievance process.

R661-24-901. Forms.

R6101-1a. UNTF Higher Educational Financial Assistance and Scholarship Application form and b.Financial Needs Analysis

R6101-2 Consent Form

KEY: scholarships, endowment fund, college, Utah Navajo Trust Fund (UNTF)

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 51-10

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R661-25	Filing No. 53473

Agency Information

1. Department:	Navajo Trust Fund
Agency:	Trustees
Street address:	151 E 500 N
City, state and zip:	Blanding, UT 84511

Contact person(s):		
Name:	Phone:	Email:
Maury Bergman	435-678-1461	mbergman@utah.gov
Tony Dayish	435-678-1468	tdayish@utah.gov

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

General Information

2. Rule or section catchline:
R661-25. Utah Navajo Trust Fund Housing Projects Policy

3. Purpose of the new rule or reason for the change:
Rule R661-7 expired on 03/01/2021. The purpose of this rule is to reinstate the expired rule.
4. Summary of the new rule or change:
The objective of the policy is to provide housing assistance to San Juan County, Utah Navajos. These requirements and guidelines already existed under Rule R661-7 so there will be no major changes due to this new rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact to the state budget with the new rule. (EDITOR'S NOTE: The corresponding 120-day emergency Rule R661-25 that is effective as of 04/14/2021 was published in the May 1, 2021, Bulletin under Filing No. 53392.)
B) Local governments:
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal impact to local governments with the new rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no costs or savings to small businesses with the rule.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no costs or savings to non-small businesses with 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):
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no fiscal

impact on persons, non-small businesses, and state or local government entities with the new rule.

F) Compliance costs for affected persons:
All requirements listed in Rule R661-25 previously existed under the 120-day emergency rule R661-25 and Rule R661-7. The rule text remains the same. Since the content of the rule has not changed, there will be no compliance costs for affected persons with the new rule.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:
The Administrator of the Utah Navajo Trust Fund, Tony Dayish, 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 new fiscal impact will result under this proposed rule because the text remains the same as Rule R661-7.

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

Tony Dayish, Administrator

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 51, 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:	07/01/2021
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10. This rule change MAY become effective on:	07/08/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Maury Bergman, Finance Manager	Date:	05/03/2021
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**R661. Navajo Trust Fund, Trustees.
R661-25. Utah Navajo Trust Fund Housing Projects Policy.
R661-25-101. Requesting UNTF Housing Assistance.**

(1) Individuals requesting UNTF housing assistance must apply to their respective Chapter and follow the Chapter's procedures for application, required documents, and prioritization. All requests, budget preparation, updates and progress reports will be processed initially through the Chapter.

(a) The requesting Chapter or organization has the primary responsibility to identify clients most in need of housing assistance and shall provide written confirmation that the applicant has not received funding to construct a new home from UNTF, Navajo Royalties Holding Fund, other housing agencies or funding source within the past 20 years.

(b) Chapters are required to maintain housing assistance policies and procedures and submit a copy of the policy to UNTF once every three (3) years, and when updated or amended.

(i) The Chapter policy should include a prioritization system that utilizes a numbering system for each criterion. Disabled, elderly and veteran applicants shall be considered first on the housing priority assistance list.

(ii) The Chapter shall have a housing application review committee.

(c) The Chapter must submit an approved resolution along with the Housing priority list that supports the request.

(d) Applicants must meet UNTF residency criteria.

R661-25-201. Types of Housing Assistance.

(1) New House construction from footing to exterior and interior completion.

(2) Completion of construction on houses that were started but not completed.

(3) Additions of a room(s) such as a bedroom, bathroom, or kitchen.

(4) Remodel or Renovation includes:

(a) Renovation or retrofit to accommodate ADA-compliant features, including but not limited to, additions/expansion for large bathrooms, walk-in, roll-in showers, widening of hallways and doorways, expansion of stoop or deck size, exterior ramps leading up to doorways.

(b) Improvement of an existing structure such as roof repair, floor installation or replacement.

(c) Weatherization measures, including replacement of broken windows or dilapidated doors, and installation of draft-proof windows, sealant, caulking, weather stripping, etc.

(d) Renovation of trailers or modular/manufactured homes, including the stabilization of the foundation with appropriate skirting and/or masonry foundation.

(e) Installation of house wiring, indoor plumbing, plumbing fixtures, kitchen cabinetry.

(f) Financial assistance for housing located off reservation land in San Juan County, Utah, is limited to renovation. The applicant must provide proof of ownership of the property.

R661-25-301. Housing Assistance Not Available.

(1) To fund the purchase of trailers or modular/manufactured housing units.

(2) For down payment assistance or closing costs are not eligible for UNTF funding.

(3) For mortgage funding or payoff

(4) For any type of loan payoffs.

(5) For purchase of appliances such as a refrigerator, range, or microwave oven.

R661-25-401. Housing Assistance Eligible Purchases.

(1) Water heaters if waterline is available and water is about to be turned on or, if the water heater is electric, electricity is functional.

(2) Wood and/or coal stove, stove pad, stove pipe, and through the roof stove pipe kit.

(3) One ceiling fan for distribution of heat.

(4) UNTF staff will determine if the materials proposed to be purchased are reasonably priced quality building materials.

(a) A client who desires a more expensive item than what is approved by UNTF staff must purchase that item using their own funds. UNTF will not pay client the difference between the UNTF staff approved item and the item client desires to purchase.

(b) If the client does not purchase the item in time for construction crew installation the client must install the item at their own cost.

R661-25-501. Required Documentation for Housing Projects.

(1) A Navajo Nation Homesite Lease will be required of all new house construction and construction completion projects.

(2) For other types of Housing Assistance applicants are strongly encouraged to have a homesite lease available for proof of ownership, utilities and other services.

(3) Matching fund agencies shall be identified and commitment letters from each agency shall be included in the proposal package.

(4) Applicants must provide documentation naming a successor owner/lessee who is permitted to occupy the residence and is obligated to maintain the property.

(5) All new construction must be based on a floor plan showing all components of the dwelling unit to be constructed. Additionally, a specific list of all materials to be used and an estimate of total man-hours for construction is required.

(6) Proof of the applicants contribution towards the construction, addition, or renovation of a dwelling in the form of receipts for the purchase of cement as well as proof of purchase of adequate waterproof material for protection from moisture damage to the bags of cement purchased.

R661-25-601. Purchasing.

(1) Only UNTF staff trained in the State of Utah Purchasing Rules are allowed to engage in purchasing activities for Chapter Projects using UNTF funds.

(2) Chapter responsibilities will be to:

(a) Identify the project or client to be assisted, in accordance with Chapter housing selection procedures;

(b) Determine the scope of work;

(c) Submit the appropriate documentation needed for the project; and

(d) Meet with UNTF staff at the beginning stages of the project.

(3) UNTF staff will execute the purchasing functions, including obtaining estimates or utilizing appropriate purchasing procedures, such as Requests for Qualifications, Requests for Proposals, or Invitations for Bids.

(4) If a chapter executes a project without involving UNTF, that expense will not be eligible for reimbursement and the project may not be able to be completed.

(5) Building materials shall not be purchased and delivered at commencement of construction.

(6) Purchases and deliveries of materials shall be completed in phases according to the following schedule.

Phase 1: Foundation materials for footing, stem wall, piers, rebar, anchor bolts, and redwood or treated lumber

Phase 2: House Shell materials for framing, trusses, OSB plywood, siding, roofing, vents

Phase 3: Exterior Doors and Windows

Phase 4: Rough-in House wiring and Plumbing

Phase 5: Insulation and Drywall

Phase 6: Flooring

Phase 7: Finish Carpentry: Cabinets, Casing and Baseboard, Exterior trim, Soffit, Interior and Exterior Painting

Phase 8: Finish House wiring and Plumbing

(7) Purchases for Stoops, Steps, or Decks can be performed at any point after Phase 1.

(8) All documentation must be submitted to the Chapter

(a) Requests for payment must include all materials receipts as well as verification signed by the homeowner, chapter representative, or UNTF representative picking up the items or signing for the delivery.

(b) The person signing the receipt shall deliver the receipt to the Chapter and/or UNTF office and shall safeguard materials from theft or damage.

(c) Upon receipt of material verification forms by the UNTF Administration, invoices will be processed for payment directly to the vendor.

R661-25-701. Funding.

(1) UNTF preference is to fund projects on a reimbursement basis. However, in exceptional circumstances the UNTF Administrator has the authority to make advance disbursements up to Five Thousand Dollars (\$5,000.00) for mobilization expenses.

(2) UNTF will disburse approved funding directly to Chapters or identified and approved contractors and/or vendors.

(3) The Chapter or UNTF will retain ten percent (10%) of the approved contractor billings until proof of completion of the housing project is provided to UNTF.

(4) The Chapter shall provide UNTF staff with an annual report identifying percentage of project completion and an explanation of what remains to be completed.

R661-25-801. Resale Approval Required.

Housing built, or appliances purchased, using UNTF funding shall not be sold without prior UNTF approval.

R661-25-901. New Housing Capital Matching Program.

(1) An applicant with at least 33.33% of the capital needed for an eligible project may be eligible for the Housing Capital Matching Program.

(2) The applicant must be approved by the Chapter as an eligible Utah Navajo qualifying for UNTF assistance.

(3) The matching funds must be in the form of cash. The eligible project must be funded in full, and cash must be received by UNTF prior to commencement of construction.

(4) The matching funds cannot be in the form of a loan to the applicant or any other type of lien.

(5) Eligible projects include new housing, additions, or major renovations, including ADA compliant features. Houses that are two stories or more are not eligible.

(6) An applicant may not own another home at the time of entering into this program.

KEY: housing, chapter, Utah Navajo Trust Fund (UNTF), eligible purchases

Date of Enactment or Last Substantive Amendment: 2021 Authorizing, and Implemented or Interpreted Law: 51-10

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-134	Filing No. 53422

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Administration	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R765-134. Informal Adjudicative Procedures Under the Utah Administrative Procedures Act
3. Purpose of the new rule or reason for the change:
The reason for this change is to rename the Department to comply with S.B. 111 passed in the 2020 General Session.
4. Summary of the new rule or change:
The reference to "Regents (Board of)" is changed to "Higher Education (Utah Board of)." The definitions are also changed to reflect the board's new name and make up. In addition, there are several other technical changes, including the renumbering of subsections.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Enactment of this change will not materially impact state revenue because this rule applies only to students who apply for scholarships or attend educational institutions.
B) Local governments:
Enactment of this change will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this change will not result in direct expenditures from tax or fee changes for small businesses because this rule does not apply to or affect small businesses.

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

Enactment of this change will not result in direct expenditures from tax or fee changes for non-small businesses because this rule does not apply to or affect non-small businesses.

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

Enactment of this change will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to students who apply for scholarships or attend educational institutions.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons since this rule provides for administrative procedures to be used by educational institutions.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Commissioner of Higher Education, David R. Woolstenhulme, 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 affects educational institutions within the state's system of higher education and has no fiscal impact on businesses.

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

David R. Woolstenhulme, 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 63G-4-102(6)		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

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

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	04/22/2021
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R765. [Regents]Higher Education (Utah Board of) Administration.

R765-134. Informal Adjudicative Procedures Under the [Utah] Administrative Procedures Act.

R765-134-1. Purpose.

The purpose of this rule is to provide [guidelines]rules and procedures for the application of [the Administrative Procedures Act]Title 63G, Chapter 4, Administrative Procedures Act, and associated regulations, to the public institutions of higher education, the [State Board of Regents]Utah Board of Higher Education, and the Utah Higher Education Assistance Authority.

R765-134-2. [References]Authority.

[2.1. Section 53B-1-103]This rule is authorized by Subsection 63G-4-102(6).

[2.2. Section 63G-4-102 et seq.]

R765-134-3. Definitions.

(1) "Act" means Title 63G, Chapter 4, Administrative Procedures Act.

[3.1.](2) "Adjudicative proceeding" means an institutional action or proceeding described in Section 63G-4-102, Utah Code Annotated (1953).

(3) "Board" means Utah Board of Higher Education.

[3.2.](4) "Institution" means [the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education]an institution that is named in Section 53B-1-102 and Utah Higher Education Assistance Authority.

[3.3.](5) "Party" means the institution or other person commencing an adjudicative proceeding, [all respondents]each respondent, [all persons]any person permitted by the presiding officer to intervene in the proceeding, and [all persons]any person authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.

[3.4.](6) "Person" means an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.

[3.5.](7) "Presiding officer" means the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.

~~[3-6-]~~(8) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

R765-134-4. ~~[Policy]~~Applicability of Rule and Findings of Board.

~~[4-1-]~~(1) The ~~[Utah]~~Administrative Procedures Act, Section 63G-4-102, provides certain exemptions from the Act which affect higher education institutions.

~~_____~~As a consequence of ~~[the foregoing]~~these statutory provisions, adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be conducted solely according to federal procedures are not governed by the ~~[Utah Administrative Procedures]~~Act.

~~[4-2-]~~(2) ~~[Campus traffic and parking—Section]~~Subsection 53B-3-106(2)~~]~~ provides that ~~["S"]~~state institutions of higher education are ~~[“]political subdivisions[“—] as these terms are used in Title 41, Chapter 6a, [Title 41]Traffic Code,” [relating to Traffic Rules and Regulations.—] The [Utah Administrative Procedures]Act applies to [“agencies—]an agency which as defined in Subsection 63G-4-103(1)(b) does not include [“]any political subdivision of the state, or any administrative unit of a political subdivision of the state.[“] Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by Title 41, Chapter 6a~~], [Title 41], [Traffic Code], hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.~~~~

~~[4-3-]~~(3)(a) ~~[Informal adjudicative proceedings for certain admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, former employee matters, and other matters not exempted from the Administrative Procedures Act—]Adjudicative proceedings, undertaken by an institution, which affect the following matters ~~[other than]are exempt from the Act:~~~~

~~_____~~~~[(a)]~~(i) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty~~];~~

~~_____~~~~[(b)]~~(ii) personnel matters for all employees~~];~~

~~_____~~~~[(c)]~~(iii) campus traffic~~];~~

~~_____~~~~[(d)]~~(iv) contracts for the purchase and sale of goods and services by the institution~~];~~ or

~~_____~~~~[(e)]~~(v) actions required by federal statute or regulation to be conducted solely according to federal procedures~~];~~

~~(b) For any adjudicative proceeding not identified in Subsection (3)(a) that is undertaken by an institution where the parties are students or employees, the proceedings [are to]shall be conducted informally according to the procedures set forth in [these rules, enacted under the authority of the Utah Administrative Procedures Act]Section R765-134-5.~~

~~(c) [Adjudicative proceedings]For any adjudicative proceeding not identified in Subsection (3)(a) that is taken by an institution where parties other than students or employees are involved are [hereby—]authorized to be handled informally according to Section R765-134-5. Such proceedings include~~], but are not limited to:~~~~

~~_____~~(i) admissions~~];~~

~~_____~~(ii) residence for tuition purposes~~];~~

~~_____~~(iii) financial aid (including the eligibility for and collection of student loans)~~];~~

~~_____~~(iv) campus parking~~];~~

~~_____~~(v) campus event participation~~];~~

~~_____~~(vi) former student matters~~];~~ and

~~_____~~(vii) former employee matters.

~~[4-4-]~~(4) ~~[Board findings as to appropriateness of informal adjudicative proceedings—]The Board makes the following findings:~~

~~_____~~(a) The use of informal procedures as provided in ~~[paragraph 4.3]Subsection R765-134.4(3) does not violate any procedural requirement imposed by [a statute other than Chapter 4, Title 63G;]the Act,~~

~~_____~~(b) ~~[the]The rights of the parties to the proceedings will be reasonably protected by the informal procedures];~~

~~_____~~(c) ~~[the]The institutions' administrative efficiency will be enhanced by this categorization[; and],~~

~~_____~~(d) ~~[the]The cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.~~

~~[4-5-]~~(5) ~~[Substitution of presiding officer—]If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.~~

~~[4-6-]~~(6) ~~[Institutional variances with this rule—]Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of [Chapter 4, Title 63G]the Act. Significant variations from the Board's rules and procedures must be approved by the Board.~~

R765-134-5. Procedures for Informal Adjudicative Proceedings.

~~[5-1-]~~(1) ~~[Commencement—]An informal adjudicative proceeding shall be commenced by either[-]:~~

~~_____~~(a) a notice of institutional action, if proceedings are commenced by the institution; or[-]

~~_____~~(b) a request for institutional action, if proceedings are commenced by persons other than the institution.

~~[5-2-]~~(2) ~~[Notice—]A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements:~~

~~_____~~(a) The notice shall be in writing, signed by a presiding officer if the proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by ~~[his]the person's representative, and shall include:~~

~~[5-2-1-]~~(i) the names and mailing addresses of ~~[all respondents]each respondent~~ and other persons to whom notice is being given;

~~[5-2-2-]~~(ii) the institution's file number or other reference number;

~~[5-2-3-]~~(iii) the name of the adjudicative proceeding;

~~[5-2-4-]~~(iv) the date that the notice of institutional action or the request for institutional action was mailed;

~~[5-2-5-]~~(v) if a hearing is to be held, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

~~[5-2-6-]~~(vi) if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;

~~[5-2-7-]~~(vii) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;

~~[5-2.8.](viii)~~ a statement of the purpose of the adjudicative proceeding, the questions to be decided [~~(c)~~to the extent known~~(b)~~] or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and

~~[5-2.9.](ix)~~ the name, title, mailing address, and telephone number of the presiding officer.

~~[5-2.10.](b)~~ The institution shall mail the notice of institutional action or the request for institutional action to each party.

~~[5-3.](3)~~ ~~[Answer not required—]~~No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

~~[5-4.](4)~~ ~~[Hearings—]~~The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

~~[5-5.](5)~~ ~~[Rights of parties to testify, present evidence, and comment on the issues—]~~In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation ~~[is normally]~~may be limited to the named parties.

~~[5-6.](6)~~ ~~[Timely notice—]~~Hearings will be held only after timely notice to ~~[all parties]~~each party.

~~[5-7.](7)~~ ~~[No discovery or subpoenas—]~~Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. ~~[This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.]~~The parties may gather and share information in a non-coercive manner.

~~[5-8.](8)~~ ~~[Access to institution's files— All parties]~~Each party shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

~~[5-9.](9)~~ ~~[Intervention prohibited—]~~Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or federal rule requires that a state permit intervention.

~~[5-10.](10)~~ ~~[Hearings open to parties— All hearings]~~Each hearing shall be open to ~~[all parties]~~each party. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

~~[5-11.](11)~~ ~~[Order of the presiding officer—]~~Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

~~[5-11.1.](a)~~ the decision;

~~[5-11.2.](b)~~ the reasons for the decision;

~~[5-11.3.](c)~~ a notice of any right of administrative or judicial review available to the parties; and

~~[5-11.4.](d)~~ the time limits for filing an appeal or request for review.

~~[5-12.](12)~~ ~~[Basis of order—]~~The presiding officer's order shall be based on the facts appearing in the institution's files and on the facts presented in evidence at any hearings.

~~[5-13.](13)~~ ~~[Hearings recorded— All hearings]~~Each hearing shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

~~[5-14.](14)~~ ~~[Institution's investigative rights—]~~Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than ~~[Chapter 4, Title 63G]~~the Act.

~~[5-15.](15)~~ ~~[Default—]~~The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and ~~[shall]~~be mailed to ~~[all parties]~~each party. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure, Rule 60. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and ~~[shall]~~determine ~~[all issues]~~each issue in the adjudicative proceeding, including those affecting the defaulting party.

~~[5-16.](16)~~ ~~[Institutional review—]~~If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in Section 63G-4-301~~[, Utah Code Annotated (1953)]~~.

~~[5-17.](17)~~ ~~[Institutional reconsideration—]~~Within ten days after the date that an order on review is issued, or within ten days after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

~~[5-18.](18)~~ ~~[Exhaustion of administrative remedies—]~~A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by ~~[statute]~~statute, only after exhausting all administrative remedies available, except that:

~~[5-18.1.](a)~~ a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required; and

~~[5-18.2.](b)~~ the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

~~[5-19.](19)~~ ~~[Filing for judicial review—]~~A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in ~~[Chapter 4, Title 63G]~~the Act.

~~[5-20.](20)~~ ~~[Judicial review—]~~The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be

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reviewed by the district courts on the record according to the standards of Subsection 63G-4-403(4). The form of the petition and procedures for this process are set forth in Section 63G-4-402, Utah Code Annotated (1953).

~~[5.21.](21) [Stay and other temporary remedies pending final disposition on judicial review—]~~Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

~~[5.22.](22) [Emergency adjudicative proceedings—]~~An institution may issue an order on an emergency basis without complying with the requirements of ~~[Chapter 4, Title 63G]~~the Act if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall~~[-]~~ comply with Section 63G-4-502.

~~[5.22.1. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;]~~

~~[5.22.2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and]~~

~~[5.22.3. give immediate notice to the persons who are required to comply with the order. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and Chapter 4, Title 63G.]~~

~~[5.23.](23)(a) [Declaratory orders—]~~Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order:

~~[-(a)](i) declaring the applicability of the statute rule, or order in question to the specified circumstances;~~

~~[-(b)](ii) setting the matter for adjudicative proceedings;~~

~~[-(c)](iii) agreeing to issue a declaratory order within a specified time; or~~

~~[-(d)](iv) declining to issue a declaratory order and stating the reasons for its action.~~

(b) The declaratory order shall contain:

~~[-(a)](i) the names of all parties to the proceeding on which it is based;~~

~~[-(b)](ii) the particular facts on which it is based; and~~

~~[-(c)](iii) the reasons for its conclusions.~~

KEY: colleges, higher education, adjudicative procedures
Date of Enactment or Last Substantive Amendment: 2021~~[July 2, 1997]~~
Notice of Continuation: September 29, 2017
Authorizing, and Implemented or Interpreted Law: 63G-4

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-604	Filing No. 53423

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Administration	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R765-604. New Century Scholarship
3. Purpose of the new rule or reason for the change:
The reason for this amendment is to add a requirement for applicants of the New Century Scholarship to complete the Free Application for Federal Student Aid as required by Subsection 53B-8-105(5). In addition, this change renames the Department to comply with S.B. 111 passed in the 2020 General Session.
4. Summary of the new rule or change:
The amendment provides an additional requirement for applicants of the New Century Scholarship to complete the Free Application for Federal Student Aid, with the ability to opt out due to financial and privacy concerns. In addition, the reference to "Regents (Board of)" is changed to "Higher Education (Utah Board of)." Further, there are several other technical changes, including the renumbering of subsections.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Enactment of this change will not materially impact state revenue because this rule applies only to students who apply for the New Century Scholarship.

B) Local governments:			
Enactment of this change will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
Enactment of this change will not result in direct expenditures from tax or fee changes for small businesses because this rule does not apply to or affect small businesses.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
Enactment of this change will not result in direct expenditures from tax or fee changes for non-small businesses because this rule does not apply to or affect non-small businesses.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
Enactment of this change will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to students who apply for the New Century Scholarship.			
F) Compliance costs for affected persons:			
There are no compliance costs for affected persons since the New Century Scholarship is a voluntary program.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
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 Higher Education, David R. Woolstenhulme, 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 affects the New Century Scholarship that is administered by the Utah Board of Higher Education and has no fiscal impact on businesses.

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

David R. Woolstenhulme, 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 53B-8-105(5)		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on:	07/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	04/22/2021
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R765. ~~Regents~~ Higher Education (Utah Board of) Administration.

R765-604. New Century Scholarship.

R765-604-1. Purpose.

The purpose of this rule is to ~~provide~~ ~~the rules~~ and procedures for the administration of the New Century Scholarship which was established to encourage students to accelerate their education by earning an associate's degree in high school from an institution within the Utah System of Higher Education.

R765-604-2. ~~References~~ Authority.

~~2.1. 53B-8-105, Utah Code Annotated 1953] This rule is authorized by Subsections 53B-8-105(5) and 53B-8-105(9). [~~
~~2.2. Regents' Policy and Procedures R609, Regents' Scholarship]~~

R765-604-3. Definitions.

~~3.1.](1) "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah Board of Higher Education[State Board of Regents], or a home-school student.~~

~~3.2.](2) "Associate's Degree" means an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under [subsection 3.5.2.]Subsection R765-604-3(5)(b)[of this rule].~~

~~3.3.](3) "Awards" means New Century Scholarship funds.~~

~~3.4.](4) "Board" means [the]Utah Board of Higher Education[State Board of Regents].~~

~~3.5.](5) "Completes the requirements for an associate's degree" means that an applicant completes either of the following:~~

~~3.5.1.](a) [a]each of the required courses for an associate's degree from an institution within the Utah System of Higher Education that offers associate's degrees[;] and applies for the associate's degree from the institution; or~~

~~3.5.2.](b) [a]each of the required courses for an equivalency to the associate's degree from a higher education~~

institution within the Utah System of Higher Education that offers baccalaureate degrees but does not offer associate's degrees.

~~(6) "FAFSA" means the financial reporting form known as Free Application for Federal Student Aid that is administered by the U.S Department of Education to determine the need and eligibility of a college student for financial aid.~~

~~(7) "GPA" means grade point average.~~

~~3.6.](8) "High school" means a public high school established by the Utah State Board of Education or a private high school within the boundaries of [the State of]Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.~~

~~3.7.](9) "High school graduation date" means the day on which the recipient's class graduates from high school. For home-schooled students refer to [subsection 4.2.1.]Subsection R765-604-4(2)(a)[of this rule].~~

~~3.8.](10) "Home-schooled" refers to a student who has not graduated from a Utah high school and received a high school [grade point average (GPA)].~~

~~3.9.](11) "Math and science curriculum" means the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the [Web]web site of the Utah System of Higher Education.~~

~~3.10.](12) "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section [4]R765-604-4[of this rule].~~

~~3.11.](13) "Reasonable progress" means enrolling and completing at least fifteen credit hours during fall and spring semesters and earning a 3.3 grade point average or higher each semester. If applicable, applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.~~

~~3.12.](14) "Recipient" means an applicant who receives an award under the requirements set forth in this rule.~~

~~3.13.](15) "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester grade point average and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester in which the recipient is seeking award payment.~~

~~3.14.](16) "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.~~

~~3.15.](17) "The Utah System of Higher Education" means the degree granting institutions of the Utah system of higher education named in Subsection 53B-1-102(1)(a)[institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State University, Salt Lake Community College, and Snow College].~~

R765-604-4. Recipient Requirements.

~~4.1.](1) [General Academic Requirements:]Unless an exception applies, to qualify as a recipient a student shall:~~

~~4.1.1.](a) complete the requirements for an associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education;~~

~~4.1.1.1.](i) with at least a 3.0 grade point average; and~~

~~4.1.1.2.](ii) by applicant's high school graduation date;[and]~~

~~[4.1.2.](b)~~ complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average[-]; and

~~(c) complete the FAFSA to the extent that it will benefit the student's ability to maximize financial aid opportunities, except that a student may opt out of this requirement due to:~~

~~(i) financial ineligibility for any potential grant or other financial aid;~~

~~(ii) personal privacy concerns; or~~

~~(iii) advice of the institution based on its assessment of the factors that may impact the student's ability to access maximum financial aid opportunities.~~

~~[4.2.](2) [Utah Home-schooled Applicants:]For each Utah home-schooled [applicant]applicant the following [requirement applies]requirements apply:~~

~~[4.2.1.](a) If a home-schooled applicant would have completed high school in 2011 or after, the high school graduation date [under [subsection 4.1.1.2.]Subsection R765-604-4(1)(a)(ii)] is June 15 of the year the applicant would have completed high school.~~

~~[4.2.2.](b) [ACT Composite Score Requirement:]A composite ACT score of 26 or higher is required in place of the high school grade point average requirement [under [subsection 4.1.2.)]Subsection R765-604-4(1)(b).~~

~~[4.3.](3) [Mandatory Fall Term Enrollment:]A recipient shall enroll in and successfully complete fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral or leave of absence from the Board under [subsection 8.7.]Subsection R765-604-8(7)[of this rule].~~

~~[4.4.](4) [Citizenship Requirement:]A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.~~

~~[4.5.](5) [No Criminal Record Requirement:]A recipient [shall]may not have a criminal record, with the exception of a misdemeanor traffic citation.~~

~~[4.6.](6) [Regents' Scholarship:]A recipient shall not receive both an award and the Regents' Scholarship established in [Utah Code]Section 53B-8-108.~~

~~(7) To assist students with the FAFSA requirement, each institution shall ensure that:~~

~~(a) each institution advisor encourages, to the extent practicable, each student to annually complete the FAFSA; and~~

~~(b) the staff and faculty who advise students on financial aid are properly trained on the benefits of completing the FAFSA.~~

R765-604-5. Application Procedures.

~~[5.1.](1) [Application Contact: Qualifying students]A qualifying student [shall]may apply for the award through the Board.~~

~~[5.2.](2) [General procedure:]An application for an award shall contain the following:~~

~~[5.2.1.](a) [Application Form: the]an official application which will become available on the New Century [Web]web site each November prior to the February 1 deadline;[-and]~~

~~[5.2.2.](b) [College Transcript:]an official college transcript showing college courses, Advanced Placement and transfer work an applicant has completed to meet the requirements for the associate's degree and verification of the date the award was earned;[-and]~~

~~[5.2.3.](c) [High School Transcript:]an official high school transcript with high school graduation dated or posted, [if applicable]-]; and~~

~~[5.2.4.](d) [ACT Score:]a copy of the student's verified ACT score, [if applicable].~~

~~[5.3.](3) [Registrar Verification:]If an applicant is enrolled at an institution which does not offer an associate's degree or an institution that will not award the associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under [4.1.1.]Subsection R765-604-4(1)(a).~~

~~[5.4.](4) [Application Deadline: Applicants]An applicant shall meet the following deadlines to qualify for an award:~~

~~[5.4.1.](a) [Application Submission: Applicants]An applicant must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.~~

~~[5.4.2.](b) [Support Documentation Submission: All necessary support documentation]Each document that is required to support the application [shall]must be submitted on or before September 1 following the applicant's high school graduation date. In some cases, exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. A Scholarship [awards]award may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.~~

~~[5.4.3.](c) [Priority Deadline:]A priority deadline may be established each year. [Applicants]An applicant who [meet]meets the priority deadline may be given first priority of consideration for awards.~~

~~[5.5.](5) [Incomplete Documentation: Applications]An application or other [submissions]submission that [have]has missing information or missing documents [are]shall be considered incomplete, [will]shall not be considered, and may result in failure to meet a deadline.~~

R765-604-6. Awards.

~~[6.1.](1) [Value of the Award:]The award is up to the amount provided by the law and determined each [Spring]spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with [subsection 6.2.]Subsection R765-604-6(2). The award shall be disbursed semester-by-semester over the shortest of the following time periods:~~

~~[6.1.1.](a) [Four]four semesters of full-time enrollment in fifteen credit hours[-];~~

~~[6.1.2.](b) [Sixty]sixty credit hours[-]; or~~

~~[6.1.3.](c) [Until]until the student meets the requirements for a baccalaureate degree.~~

~~[6.2.](2) [The Board May Decrease Award:]If the appropriation from the [Utah]Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award.~~

~~[6.3.](3) [Eligible Institutions:]An award may be used at either:~~

~~[6.3.1.](a) [Public Institution:]a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or~~

~~[6.3.2.](b) [Private Nonprofit Institution:]a private not-for-profit higher education four-year institution in the state [of Utah]~~

NOTICES OF PROPOSED RULES

]accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

[6.4.](4) [~~Enrollment at Multiple Institutions:-~~]The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student is earning a baccalaureate degree.

[6.5.](5) [~~Student Transfer:-~~]The award may be transferred to a different eligible institution upon request of the recipient.

[6.6.](6) [~~Financial Aid and other Scholarships:-~~]With the exception of the Regents' Scholarship [~~(as detailed)referred to in [subsection 4.6]Subsection R765-604-4(6)[- of this policy])~~], tuition waivers, financial aid, or other scholarships [~~will]may~~ not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

[7.1.](1) [~~Disbursement Schedule of Award:-~~]The award shall be disbursed semester-by-semester over the shortest of the following time periods:

[7.1.1.](a) [~~Four]four~~ semesters of enrollment in fifteen credit hours;

[7.1.2.](b) [~~Sixty]sixty~~ credit hours; or

[7.1.3.](c) [~~Until]until~~ the recipient meets the requirements for a baccalaureate degree.

[7.2.](2) [~~Enrollment Documentation:-~~]The recipient shall submit to the Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is enrolled.

[7.3.](3) [~~Award Payable to Institution:-~~]The award [~~will]shall~~ be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds [~~should]must~~ be used for higher education expenses including tuition, fees, books, supplies, and equipment required for instruction.

[7.4.](4) [~~Dropped Hours After Award:-~~]If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours the scholarship [~~will]shall~~ be revoked [~~(see 8.1)under Subsection R765-604-8(1)~~ unless the student needs fewer than fifteen credit hours for completion of a degree.

R765-604-8. Continuing Eligibility.

[8.1.](1) [~~Reasonable Progress Toward Degree Completion:-~~]The Board may cancel a recipient's scholarship if the student fails to:

[8.1.1.](a) [~~Maintain 3.3 GPA: to-~~]maintain a 3.3 GPA or higher for each semester for which the student has received awards[-]; or

[8.1.2.](b) [~~Reasonable Progress: to-~~]make reasonable progress [~~(fifteen credit hours)-~~]toward the completion of a baccalaureate degree, unless the recipient has received a deferral of award or leave of absence under Subsection R765-604-8(7), and submit the documentation by the deadline as described in [subsection 8.2]Subsection R765-604-8(2). [~~A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll in fifteen credit hours continuously for fall and spring semesters.]~~

[8.2.](2) [~~Duty of Student to Report Reasonable Progress:-~~]Each semester, the recipient must submit to the Board a copy of [~~his~~

~~or her]the recipient's grades for verification of grade point average and [~~has]must have~~ completed a minimum of fifteen credit hours each semester. [~~Recipients will]A recipient may~~ not be paid for the coming semester until the requested documentation has been received. If the recipient at any time fails to maintain a 3.3 grade point average or higher following probation or fails to enroll and complete fifteen credit hours, the scholarship may be revoked. The recipient must submit the following [These-]documents [must be submitted-]by the [following-]dates that are indicated:~~

[8.2.1.](a) For a recipient attending an institution in the Utah System of Higher Education, the recipient must submit:

_____ (i) [~~Proof]proof~~ of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30[-];

[8.2.2.](ii) [~~Proof]proof~~ of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15[-]; and

[8.2.3.](iii) [~~Proof]proof~~ of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

[8.2.4.](b) For a recipient attending Brigham Young University, the recipient must submit:

_____ (i) [~~Proof]proof~~ of enrollment if [~~you are]the recipient is~~ attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

[8.2.5.](ii) [~~Proof]proof~~ of enrollment if [~~you are]the recipient is~~ attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

[8.2.6.](iii) [~~Proof]proof~~ of enrollment if [~~you are]the recipient is~~ attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

[8.3.](3) [~~Probation:-~~]If a recipient earns less than a 3.3 GPA in any single semester, the recipient must earn a 3.3 GPA or better the following semester to maintain eligibility for the scholarship. If the recipient again at any time earns less than a 3.3 GPA the scholarship [~~will]shall~~ be revoked.

[8.4.](4) [~~Final Semester:-~~]A recipient [~~will]may~~ not be required to enroll in fifteen credit hours if the recipient can complete the degree program with fewer credits.

[8.5.](5) [~~No Awards After Five Years:-~~]The Board [~~will]may~~ not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

[8.6.](6) [~~No Guarantee of Degree Completion:-~~]An award does not guarantee that the recipient will complete [~~his or her-]a~~ baccalaureate program within the recipient's scholarship eligibility period.

[8.7.](7)(a) [~~Deferral or Leave of Absence:-~~

_____ 8.7.1.]A recipient must apply to the Board and receive an approved deferral of award or leave of absence if the recipient will not enroll in fifteen credit hours continuously for fall and spring semesters. [~~A recipient shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll in fifteen credit hours.]~~

[8.7.2.](b) A deferral or leave of absence [~~will]may~~ not extend the time limits of the scholarship under [~~subsection 8.5]Subsection R765-604-8(5).~~

[8.7.3.](c) Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian[~~f~~] or

religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

[9.1.](1) [~~Scholarship Determinations:~~] Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant [will]shall receive a letter informing the applicant of the decision on [his/her]the application.

[9.2.](2) [~~Appeals: Applicants and recipients have]~~Each applicant and recipient has the right to appeal an adverse decision.

[9.2.1.](a) [~~Appeals]~~An appeal shall be made by mailing a completed Appeal Application found on the program web site to the Scholarship Review Committee. The Appeal Application must be postmarked [within]no later than 30 days [of date of]after the date of the letter giving notice [notification]of the adverse action[—by submitting a completed Appeal Application found on the program Web site].

[9.2.2.](b) An [~~appeal filed]~~Appeal Application submitted before the [applicant/recipient]appellant receives official notification of the adverse action from the Scholarship Review Committee [regarding their application, will]shall not be considered.

[9.2.3.](c) The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the [~~applicant/recipient]appellant met all scholarship requirements and submitted all requested documentation by the deadline.~~

[9.2.4.](d) Appeals are not accepted for late document submission.

[9.2.5.](e) [~~A]~~The submission of an [appeal]Appeal Application does not guarantee a reversal of the original decision.

[9.2.6.](f) It is the [~~applicant/recipient's]appellant's responsibility to file the appeal, including [all]any supplementary documentation. [~~All documents]~~Each document [shall]must be mailed to the New Century Scholarship address.~~

[9.2.7.](g) [~~Appeals will]~~The Appeal Application shall be reviewed and decided by an appeals committee appointed by the commissioner of higher education.

KEY: higher education, secondary education, scholarships
Date of Enactment or Last Substantive Amendment: 2021[July 8, 2013]
Notice of Continuation: July 17, 2019
Authorizing, and Implemented or Interpreted Law: 53B-8-105(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-621	Filing No. 53424

Agency Information

1. Department:	Higher Education (Utah Board of)
Agency:	Administration
Building:	Board of Regents Building, The Gateway

Street address:	60 S 400 W	
City, state:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R765-621. Terrell H. Bell Education Scholarship Program
3. Purpose of the new rule or reason for the change:
The reason for this amendment is to add a requirement for applicants of the Terrell H. Bell Education Scholarship to complete the Free Application for Federal Student Aid as required by Subsection 53B-8-116(6)(b). In addition, this change renames the Department to comply with S.B. 111 passed in the 2020 General Session.
4. Summary of the new rule or change:
The amendment provides an additional requirement for applicants of the Terrell H. Bell Education Scholarship to complete the Free Application for Federal Student Aid, with the ability to opt out due to financial and privacy concerns. In addition, the reference to "Regents (Board of)" is changed to "Higher Education (Utah Board of)." Further, there are several other technical changes, including the renumbering of subsections.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Enactment of this change will not materially impact state revenue because this rule applies only to students who apply under the Terrell H. Bell Education Scholarship Program.
B) Local governments:
Enactment of this change will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
Enactment of this change will not result in direct expenditures from tax or fee changes for small businesses

because this rule does not apply to or affect small businesses.

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

Enactment of this change will not result in direct expenditures from tax or fee changes for non-small businesses because this rule does not apply to or affect non-small businesses.

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

Enactment of this change will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to students who apply under the Terrell H. Bell Education Scholarship Program.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons since the Terrell H. Bell Education Scholarship Program is voluntary.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Commissioner of Higher Education, David R. Woolstenhulme, 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 affects the Terrell H. Bell Education Scholarship Program that is administered by the Utah Board of Higher Education and has no fiscal impact on businesses.

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

David R. Woolstenhulme, 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 53B-8-116(6)		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	04/22/2021
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R765. ~~[Regents]~~ Higher Education (Utah Board of), Administration.

R765-621. Terrell H. Bell Education Scholarship Program.

R765-621-1. Purpose.

The purpose of this rule is to ~~[To]~~ provide the rules and procedures for administration of the Terrell H. Bell Teaching Education Scholarship Program, ensuring it recruits first-generation students into teaching careers, encourages outstanding students to teach in high needs areas in Utah's public schools, and to recognize teaching as a critically important career choice for the state of Utah.

R765-621-2. ~~[References]~~ Authority.

This rule is authorized by Subsection 53B-8-116(6). ~~[2-1- Title 53B, Chapter 8, Part 116, Terrell H. Bell Education Scholarship Program~~

~~2.2. Title 53E, Chapter 6, Part 302, Education Professional Licensure, Licensing Requirements, Teacher Preparation Programs]~~

R765-621-3. Definitions.

~~[3-1-]~~(1) "Approved Program" means:

~~[3-1-1-]~~(a) a teacher preparation program that meets the education profession licensure standards described in ~~[Title 53E, Chapter 6, Part 302]~~ Section 53E-6-302, and provides enhanced clinical experiences, or prepares an individual to become a speech-language pathologist or another licensed professional providing services in a public school to students with disabilities; or

~~[3-1-2-]~~(b) courses taken at Salt Lake Community College or Snow College that lead students to make reasonable progress to meet institutional criteria for admission into a program in accordance with ~~[section 3-1-1- of this rule]~~ Subsection R765-621-3(1)(a).

(2) "Board" means Utah Board of Higher Education.

~~[3-2-]~~(3) "Eligible ~~[Institution]~~ institution" means a public or private institution of higher education in Utah that offers an approved program.

(4) "FAFSA" means the financial reporting form known as Free Application for Federal Student Aid that is administered by the U.S Department of Education to determine the need and eligibility of a college student for financial aid.

~~[3-3-]~~(5) "High Needs Area" means a subject area or field in public education that has a high need for teachers or other employees, determined annually by the Board in consultation with the State Board of Education.

~~[3-4-]~~(6) "First-generation ~~[Student]~~ student" means ~~[an means]~~ a student for whom no parent or guardians attained a bachelor's degree.

~~[3-5-]~~(7) "Full-time ~~[Enrollment]~~ enrollment" means 12 semester hours or such other number of hours as determined by the recipient's institution.

~~[3-6-]~~(8) "Part-time ~~[Enrollment]~~ enrollment" means a minimum of 6 credits in a semester.

~~[3-7-]~~(9) "Average ~~[Scholarship]~~ scholarship ~~[Amount]~~ amount" means average Utah System of Higher Education

undergraduate resident tuition and general student fees for the corresponding academic year.

R765-621-4. General Award Conditions.

~~[4-1-]~~(1) Scholarship Award.

~~[4-1-1-]~~(a) Under this program, an eligible institution may award a scholarship to an individual for an amount up to the cost of resident tuition, fees, and books for the number of credit hours in which the individual is enrolled each semester.

~~[4-1-1-]~~(b) An eligible private institution may not award a scholarship for an amount that exceeds the average scholarship amount granted by a public institution of higher education.

~~[4-1-2-]~~(c) A recipient may receive a scholarship for up to four consecutive years, or equivalent when considering institution-approved leaves of absence.

~~[4-1-3-]~~(d) Eligible institutions may award scholarships to full-time or part-time enrolled students.

~~[4-2-]~~(2) Application and Award Procedures.

~~[4-2-1-]~~(a) An eligible institution shall develop processes for promoting and distributing awards consistent with this ~~[policy]~~ rule, and ~~[will]~~ shall set application deadlines that accommodate both full-time and part-time students.

~~[4-2-2-]~~(b) Applications must require a student's declaration to earn a degree in an approved program.

~~[4-3-]~~(3) Prioritizing Awards.

~~[4-3-1-]~~(a) Institutions shall prioritize scholarship awards as follows:

~~[4-3-1-]~~(i) First, to first-generation students who intend to work in any area in a Utah public school.

~~[4-3-2-]~~(ii) Second, to students who are not first generation students but intend to work in a high needs area in a Utah public school.

~~[4-3-3-]~~(iii) Third, to students who meet the requirements in Section ~~[5]~~ R765-621-5 ~~[of this rule]~~.

R765-621-5. Initial and Continuing Eligibility.

~~[5-1-]~~(1) To be eligible for a scholarship awarded under this rule, an ~~[Applicants]~~ applicant must do the following:

~~[5-1-1-]~~(a) declare ~~[their]~~ the intent to earn a degree in an approved program and to teach in a Utah public school after graduation~~[-];~~ and

~~[5-1-2-]~~(b) complete the FAFSA to the extent that it will benefit the student's ability to maximize financial aid opportunities, except that a student may opt out of this requirement due to:

~~[5-1-2-1-]~~(i) financial ineligibility for any potential grant or other financial aid;

~~[5-1-2-2-]~~(ii) personal privacy concerns; or

~~[5-1-2-3-]~~(iii) advice of the institution based on its assessment of the factors that may impact the student's ability to access maximum financial aid opportunities.

~~[5-2-]~~(2) Award recipients must maintain satisfactory academic progress in accordance with their institution's policies.

~~[5-3-]~~(3) A recipient must make reasonable progress to meet institutional criteria for admission to an approved program. Once admitted to an approved program a recipient must maintain reasonable progress towards completion of an approved program.

~~[5-4-]~~(4) ~~[Recipients transferring]~~ A recipient who transfers to another eligible institution ~~[will]~~ shall retain an award if they continue to meet criteria established for recipients at the receiving institution.

~~[5-5-]~~(5) After no more than four semesters of full-time, or eight semesters of part-time postsecondary course work, a recipient

NOTICES OF PROPOSED RULES

must apply and be accepted into an approved program at an eligible institution.

[5.6.](6) A recipient who has not been accepted into an approved program at an eligible institution may be granted a temporary deferral of an award for up to two years while seeking acceptance into an approved program.

[5.7.](7) After providing a recipient notice and an opportunity to respond, an institution may rescind a recipient's scholarship if the dean of education or the director of financial aid determines the recipient:

[5.7.1.](a) is failing to make reasonable progress toward completion of program requirements[;]; or

[5.7.2.](b) has demonstrated to a reasonable certainty that [he or she]the recipient does not intend to teach at a public school in Utah after graduation.

[5.8.](8) [Appeals.]Upon request by the student, the institution shall provide an opportunity for the student to appeal a dean or director's determination to rescind the scholarship to a committee of at least three impartial persons.

[5.9.](9) [Leaves of Absence.]A recipient may seek leave of absence from attending an institution in accordance with applicable deferral policies at a corresponding eligible institution.

R765-621-6. Transfer of Award Funds.

[6.1.—Recipients]A recipient may transfer to another eligible institution and retain the scholarship if [they]the recipient meet all requirements of the receiving institution. [Transfer students are ultimately]The recipient shall be responsible for communicating with the recipient's [colleges/schools]college or school of education and the financial aid [offices]office at the receiving institutions well in advance. [Transfer students]A recipient who [do]does not meet application deadlines or demonstrate satisfactory academic progress may have [their]the recipient's scholarship rescinded. The receiving institution [is]shall be responsible to make any adjustments in a recipient's award.

R765-621-7. Distribution of Award Funds to Institutions.

[7.1.—]The Board [will]shall annually distribute available funds to eligible institutions proportionally equal to the total number of teachers who graduated from an eligible institution and were hired by a Utah public school district for the most recent three cohort years available, minus funds for Snow College and Salt Lake Community College allocated at the discretion of the Board.

R765-621-8. Reporting.

[8.1.](1) On or before June 30 each year, eligible institutions shall report to the Board [of Regents]the following:

[8.1.1.](a) [Any]any new or procedures, application materials[;];

[8.1.2.](b) [The]the name and student identification number, first-generation status, and specific enrolled program of [all recipients]each recipient to whom the institution awarded scholarship funds the current academic year[;];

[8.1.3.](c) [The]the scholarship amount each recipient received[;]; and

[8.1.4.](d) [The]the number of first-generation recipients.

R765-621-9. FAFSA Completion Requirement.

To assist students with the FAFSA requirement, each institution shall ensure that:

(1) each institution advisor encourages, to the extent practicable, each student to annually complete the FAFSA; and

(2) the staff and faculty who advise students on financial aid are properly trained on the benefits of completing the FAFSA.

KEY: education, scholarship, teaching

Date of Enactment or Last Substantive Amendment: 2021[September 23,]

Authorizing, and Implemented or Interpreted Law: Title 53B, Chapter 8, Part 116

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-622	Filing No. 53425

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Administration	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

General Information

2. Rule or section catchline:
R765-622. Career and Technical Education Scholarship Program
3. Purpose of the new rule or reason for the change:
The reason for filing this amendment is to change the definition of "eligible institution" and to rename the Department to comply with S.B. 111 passed in the 2020 General Session.
4. Summary of the new rule or change:
The amendment changes the definition of "eligible institution" to match the statutory definition. In addition, the amendment changes the numbering style of the subsections and makes other technical changes. Further, the reference to "Regents (Board of)" is changed to "Higher Education (Utah Board of)."

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enactment of this change will not materially impact state revenue because this rule applies only to students who apply under the Career and Technical Education Scholarship Program.

B) Local governments:

Enactment of this change will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this change will not result in direct expenditures from tax or fee changes for small businesses because this rule does not apply to or affect small businesses.

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

Enactment of this change will not result in direct expenditures from tax or fee changes for non-small businesses because this rule does not apply to or affect non-small businesses.

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

Enactment of this change will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to students who apply under the Career and Technical Education Scholarship Program.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons since the Career and Technical Education Scholarship Program is voluntary.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Commissioner of Higher Education, David R. Woolstenhulme, 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 affects the Career and Technical Education Scholarship Program that is administered by the Utah Board of Higher Education and has no fiscal impact on businesses.

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

David R. Woolstenhulme, 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 53B-8-115(5)		
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Public Notice Information

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

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

A) Comments will be accepted until: 07/01/2021

10. This rule change MAY become effective on: 07/08/2021

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

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	04/22/2021
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R765. ~~Regents~~ Higher Education (Utah Board of) Administration.

R765-622. Career and Technical Education Scholarship Program.

R765-622-1. Purpose.

The purpose of this rule is to ~~to~~ provide the rules and procedures for administration of the Career and Technical Education Scholarship Program, which will provide financial assistance to students pursuing career and technical education in high demand industries.

R765-622-2. ~~References~~ Authority.

This rule is authorized by Subsection 53B-8-115(5). ~~2.1. Title 53B, Chapter 8, Part 115, Career and Technical Education Scholarship Program~~
~~2.2. Title 53B, Chapter 16, Part 209, Community Colleges~~
~~2.3. Title 53B, Chapter 18, Part 1201, Utah State University Eastern~~
~~2.4. Title 53B, Chapter 18, Part 301, Area Education Centers]~~

R765-622-3. Definitions.

~~3.1.~~(1) "Board" means Utah Board of Higher Education.
 (2) "Eligible ~~institution~~ institution" means Salt Lake Community College's School of Applied Technology established in Section 53B-16-209 ~~[Title 53B, Chapter 16, Part 209]~~; Snow College; Utah State University Eastern established in Section 53B-18-1201 ~~[Title 53B, Chapter 18, Part 1201]~~; Utah State University Blanding established in Section 53B-18-1202; or ~~the~~ Utah State University regional campus ~~[area education center]~~ located at or near Moab described in Section 53B-18-301 ~~[Title 53B, Chapter 18, Part 301]~~.

~~3.2.~~(3) "High ~~[Demand Program]~~ demand program" means a non-credit career and technical education program that is offered by an eligible institution, leads to a certificate, and is designated by the board in accordance with ~~[section 9.1. of this rule]~~ Subsection 765-622-9(1).

R765-622-4. General Award Administration.

~~4.1.~~(1) Scholarship Award: an eligible institution may award a scholarship to an individual who is enrolled in, or intends to enroll in, a high demand program under the following procedures ~~[-]~~:

~~4.1.1.~~(a) An eligible institution may award a scholarship for an amount of money up to the total cost of tuition, fees, and required textbooks for the high demand program in which the scholarship recipient is enrolled or intends to enroll.

~~4.1.2.~~(b) An eligible institution may award a scholarship to a scholarship recipient for up to two academic years.

~~4.1.3.~~(c) An eligible institution may cancel a scholarship if the scholarship recipient does not:

~~4.1.3.1.~~(i) maintain enrollment in the eligible institution on at least a half time basis, as determined by the eligible institution; or

~~4.1.3.2.~~(ii) make satisfactory progress toward the completion of a certificate.

~~4.2.~~(2) Application Procedures. An eligible institution shall develop a simple, accessible application process, and ~~[will]~~ shall set application deadlines that accommodate both full-time and part-time students.

~~4.3.~~(3) Prioritization for Underserved Populations. An eligible institution shall establish criteria to identify underserved populations and to assess if an applicant is a member of an underserved population. ~~Eligible [Institutions-]institutions~~ shall prioritize scholarship awards for applicants who are members of an underserved population in accordance with their criteria. ~~Eligible [Institutions-]institutions~~ shall provide the criteria and prioritization methodology to the Board.

R765-622-5. Continuing Eligibility.

~~5.1.~~(1) After providing a recipient notice and an opportunity to respond, an eligible institution may rescind a recipient's scholarship if it determines the recipient has not met the following requirements:

~~5.1.1.~~(a) Award recipients must maintain satisfactory academic progress in accordance with their institutions' policies.

~~5.1.2.~~(b) Recipients must be enrolled at least half-time as determined by the institution.

~~5.2.~~(2) Deferment. A recipient may seek deferment of an award in accordance with applicable deferral policies at the eligible institution.

R765-622-6. Transfer of Award Funds.

~~6.1. ———]~~ Recipients A recipient who ~~[are]~~ transferring ~~[transfers]~~ transfers to another eligible institution ~~[are]~~ shall be responsible to inform the financial aid office at the institution to which ~~[they are]~~ the recipient is transferring that ~~[they are]~~ the recipient is an award recipient. The financial aid ~~[offices]~~ office at the respective ~~[institutions]~~ institution shall coordinate the transfer of any scholarship funds and information. The receiving institution ~~[will]~~ shall verify the transferring student's ongoing eligibility in accordance with this ~~[policy]~~ rule and make any adjustments in a recipient's award.

R765-622-7. Distribution of Award Funds to Eligible Institutions.

[7.1.—]The Board [~~will~~shall] annually distribute available funds to eligible institutions in accordance with the following formula:

[7.1.1.—]Fifty percent of each year's appropriation [~~will~~shall] be divided and evenly distributed to Utah State University, Snow College, and the Salt Lake Community College's School of Applied Technology. Remaining funds [~~will~~shall] be distributed proportionally to the total rolling three-year average of students enrolled in non-credit CTE courses at each eligible institution.

R765-622-8. Reporting.

[8.1.](1) On or before September 30 each year, eligible institutions shall report to the Board of Regents the following:

[8.1.1.](a) [~~The~~the] name and student identification of all recipients to whom the institution awarded scholarship funds the prior academic year[-];

[8.1.2.](b) [~~The~~the] scholarship amount each recipient received, including additional amounts from other sources[-];

[8.1.3.](c) [~~The~~the] programs in which scholarship recipients enrolled[-]; and

[8.1.4.](d) [~~Evidence~~evidence] that each award [~~recipients are~~recipient is] eligible to receive a scholarship [~~awards~~award].

[8.2.](2) The Board [~~of Regents~~] may, at any time, request additional documentation or data related to the Career and Technical Education Scholarship Program and may review or formally audit an institution's compliance with this [~~policy~~rule].

R765-622-9. Determination of High Demand Programs.

[9.1.—]Every other year, after consulting with [~~their~~its] regional Department of Workforce Services [~~representatives~~representative], [~~the~~each] eligible [~~institutions~~institution] [~~will~~shall] identify non-credit career and technical education programs that prepare individuals to work in jobs that in Utah have high employer demand and high median hourly wages, or significant industry importance. [~~The~~Each] eligible [~~institutions~~institution] shall submit the selected programs to the Board for consideration and final approval.

KEY: education, technical, career, scholarship
Date of Enactment or Last Substantive Amendment: 2021[September 23,]
Authorizing, and Implemented or Interpreted Law: 53B-8-115

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R137-1	Filing No. 50222

Agency Information

1. Department:	Career Service Review Office	
Agency:	Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state, zip:	Taylorsville, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Akiko Kawamura	385-346-8552	akawamura@utah.gov
Annette Morgan	385-346-8551	amorgan@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R137-1. Grievance Procedure 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 is enacted under the Utah State Personnel Management Act. Section 67-19a-203 grants authority to the administrator to make rules governing the procedures for employee grievances filed under the statute.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary for employee grievances filed under the Utah State Personnel Management Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Akiko Kawamura, Administration	Date:	05/06/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-923	Filing No. 53282

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state, zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200

Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R277-923. American Indian and Alaskan Native Education State Plan Pilot Programs

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Section 53F-5-603 which provides that the Board may make rules related to the programs; and 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.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no written comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule continues to be necessary because it provides criteria for evaluating grant applications; and procedures for: a school district to apply to the Board to receive grant money, and the review of the use of grant money. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/13/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R317-7	Filing No.	50776
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Agency Information

1. Department:	Environmental Quality
Agency:	Water Quality
Room no.:	DEQ, 3rd Floor

Building:	Multi Agency State Office Building
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:
Drummond Earley	801-536-4088	dearley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-7. Underground Injection Control (UIC) Program

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Underground Injection Control (UIC) rule for state programs are federally mandated by 40 CFR 145.11(b), as a result of the federal Safe Drinking Water Act (SDWA). If a state does not obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the Environmental Protection Agency (EPA) will enforce the federal rules in that state using Direct Implementation procedures. The Utah Water Quality Board promulgated the Utah UIC rule under the authority of Section 19-5-104 of the Water Quality Act which allows rules to be made in order to protect drinking water sources.

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 date of the last substantive amendment to this rule is September 24, 2013. This has not been a controversial rule. No comments have been received either supporting or opposing this rule since the last five-year review nor during the September 24, 2013 amendment process.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The rule is required to maintain state primacy for administering Utah's UIC Program. If Utah does not obtain and maintain primacy to enforce UIC rules at least equivalent to the federal rules, then the EPA will enforce the federal rules using Direct Implementation procedures. In promulgating this rule, the Water Quality Board made the determination that the UIC Program is best administered at the state level. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, PhD, Director	Date:	05/13/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R317-11	Filing No. 50778
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Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	DEQ, 3rd 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
Ken Hoffman	801-536-4313	kenhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal 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 requiring training and certification of individuals who conduct soil evaluations and percolation tests, design, inspect, and maintain underground wastewater disposal systems.
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 2013 to correct errors and to include

additional technical information. This rule was continued in 2016. No written comments have been received since the 2013 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 for training and certification of individuals who conduct soil evaluations and percolation tests, design, inspect, and maintain underground wastewater disposal systems. This rule is essential for maintaining professional standards for individuals and businesses that perform underground wastewater disposal system services and to protect citizens that do not have access to a public sewer system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, PhD, Director	Date:	05/13/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R388-805	Filing No. 52750
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Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	Box 142104	
City, state, zip:	Salt Lake City, UT 84114-2104	
Contact person(s):		
Name:	Phone:	Email:
Tyler Fisher	801-538-6353	TFisher@Utah.gov
Allison Allred	801-538-6311	AAllred@Utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R388-805. Ryan White Part B Program

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is enacted under Sections 26-1-5, 26-1-15, and 26-1-18; and Subsections 26-1-30(2)(a), (b), (c), and (g). The Department of Health (Department) has the authority to accept federal aid and to administer federally assisted state programs for public health, health planning, and medical assistance. Ryan White Part B Program funding is administered by the US Department of Health and Human Services (HHS). Part B provides grant funding to states and territories to improve the quality, availability and organization of HIV health care and support services. Grant recipients include all 50 states.

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 Ryan White Part B Program must be continued in order to enable the Department to accept and administer Part B Program funds to improve the public's health as described in Box 3 above.

Agency Authorization Information

Agency head or designee, and title:	Richard G. Saunders, Executive Director	Date:	05/12/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R495-885	Filing No. 51185
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Agency Information

1. Department:	Human Services	
Agency:	Administration	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

Elisabeth Kitchens	385-303-2953	ehkitchens@utah.gov
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R495-885. Employee Background Screenings

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 and enacted through Sections 62A-1-118 and 62A-2-120. These sections grant rulemaking authority and require the Department of Human Services (DHS) to establish processes and procedures as it relates to the background screening process.

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.

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 continuation of this rule is essential to meet the requirements established in Sections 62A-1-118 and 62A-2-120. This rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

Agency Authorization Information

Agency head or designee, and title:	Nathan Checketts, Deputy Director	Date:	04/30/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R539-9	Filing No. 51313
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Agency Information

1. Department:	Human Services	
Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		

Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw		jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R539-9. State Supported Employment Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The legislature established a supported employment services program that operates without Medicaid funding. Section 62A-5-103.1 requires the Division of Services for People with Disabilities (Division) to make rules for the implementation and administration of the supported employment services program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division has not received written comments regarding Rule R539-9.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R539-9 describes the requirements and expectations of program participants that are necessary to administer the program in accordance with statute. The rule also establishes priority enrollment as required by Subsection 62A-5-103.1(4). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nathan Checketts, Deputy Director	Date:	04/30/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R652-150	Filing No. 51711

Agency Information

1. Department:	Natural Resources
Agency:	Forestry, Fire and State Lands
Room no.:	352

Building:	DNR	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 145703	
City, state, zip:	Salt Lake City, UT 84114-5703	
Contact person(s):		
Name:	Phone:	Email:
Brianne Emery	385-239-0791	brianneemery@utah.gov
Jamie Barnes	385-222-1536	jamiebarnes@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R652-150. Utah Bioprospecting Act
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 adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division of Forestry, Fire, and State Lands (Division) to promulgate rules, and by Section 65A-14-101 et seq. to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct bioprospecting activities.
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 has been enacted to foster the discovery and evaluation of these resources in a way that benefits the citizens of Utah. By registration of Bioprospecting the State reserves the right for the citizens to share in any future economic value of these resources. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jamie Barnes, Interim Director	Date:	05/11/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R708-46	Filing No. 51890

Agency Information

1. Department:	Public Safety	
Agency:	Driver License	
Room no.:	3rd Floor	
Building:	Calvin Rampton Complex	
Street address:	4501 S 2700 W	
City, state, zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 1445001	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-965-4018	kgibb@utah.gov
Tara Zamora	801-964-4483	tarazamora@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 53-3-206(2)(c) which states that the Driver License Division (Division) shall make rules establishing the procedures and requirements for a refugee or an approved asylee to take an examination of the person's knowledge of the state traffic laws in the person's native language.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division has not received any written comments regarding this rule 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 53-3-206 and is necessary to outline the procedures and requirements for a refugee or approved asylee to take a written knowledge

test in their native language. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Christopher Caras, Division Director	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R714-160	Filing No. 51922

Agency Information

1. Department:	Public Safety	
Agency:	Highway Patrol	
Building:	Calvin Rampton Complex	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84119-5994	
Mailing address:	PO Box 141100	
City, state, zip:	Salt Lake City, UT 84114-1100	
Contact person(s):		
Name:	Phone:	Email:
Tim Kincaid	801-580-9931	tkincaid@utah.gov
Kim Gibb	801-556-8198	kgibb@utah.gov
Matt Spillman	801-698-2186	mspillman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R714-160. Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections
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 Subsection 53-8-204(5), which requires the Division of Highway Patrol (Division) to make rules:
a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway;
b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely;

c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections;

d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate;

e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students;

f) establishing requirements:

i) designed to protect consumers from unwanted or unneeded repairs or adjustments;

ii) for maintaining safety inspection records;

iii) for providing reports to the Division; and

iv) for maintaining and protecting safety inspection certificates;

g) establishing procedures for a motor vehicle that fails a safety inspection;

h) setting bonding amounts for safety inspection stations if bonds are required under Subsection (3)(a); and

i) establishing procedures for a safety inspection station to follow if the station is going out of business; and Subsection 41-6a-1601(2), which requires the department to make rules setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway as required under Title 41, Chapter 6a, Part 16.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments received during 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 by Subsections 53-8-204(5) and 41-6a-1601(2), and is necessary in order to establish safety standards for vehicle equipment and safe operation and procedures and requirements to ensure that vehicle inspections are conducted by qualified individuals in a safe environment using safe equipment for the protection of both consumers and employees; to establish requirements for maintaining and protecting records and providing reports to the Division; to establish procedures for a vehicle that fails an inspection; to set bonding amounts when required; and to establish procedures for when a safety inspection station goes out of business. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Tim Kincaid, Captain	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R714-161	Filing No. 51918

Agency Information

1. Department:	Public Safety	
Agency:	Highway Patrol	
Building:	Calvin Rampton Complex	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84119-5994	
Mailing address:	PO Box 141100	
City, state, zip:	Salt Lake City, UT 84114-1100	
Contact person(s):		
Name:	Phone:	Email:
Tim Kincaid	801-580-9931	tkincaid@utah.gov
Kim Gibb	801-556-8198	kgibb@utah.gov
Matt Spillman	801-698-2186	mspillman@utah.gov

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

General Information

2. Rule catchline:
R714-161. Equipment Standards for Motorcycle Safety Inspections

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 Subsection 53-8-204(5), which requires the Division of Highway Patrol (Division) to make rules:

a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway;

b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely;

c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections;

d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate;

e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students;

f) establishing requirements:

i) designed to protect consumers from unwanted or unneeded repairs or adjustments;

ii) for maintaining safety inspection records;
 iii) for providing reports to the Division; and
 iv) for maintaining and protecting safety inspection certificates;
 g) establishing procedures for a motor vehicle that fails a safety inspection;
 h) setting bonding amounts for safety inspection stations if bonds are required under Subsection (3)(a); and
 (i) establishing procedures for a safety inspection station to follow if the station is going out of business; and
 Subsection 41-6a-1601(2), which requires the Department of Public Safety to make rules setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway as required under Title 41, Chapter 6a, Part 16.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments received during 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 by Subsections 53-8-204(5) and 41-6a-1601(2), and is necessary in order to establish safety standards for motorcycle equipment and safe operation and procedures and requirements to ensure that motorcycle inspections are conducted by qualified individuals in a safe environment using safe equipment for the protection of both consumers and employees; to establish requirements for maintaining and protecting records and providing reports to the Division; to establish procedures for a vehicle that fails an inspection; to set bonding amounts when required; and to establish procedures for when a safety inspection station goes out of business. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Tim Kincaid, Captain	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R714-162	Filing No. 51919
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Agency Information

1. Department:	Public Safety
Agency:	Highway Patrol
Building:	Calvin Rampton Complex
Street address:	4501 S 2700 W

City, state, zip:	Salt Lake City, UT 84119-5994	
Mailing address:	PO Box 141100	
City, state, zip:	Salt Lake City, UT 84114-1100	
Contact person(s):		
Name:	Phone:	Email:
Tim Kincaid	801-580-9931	tkincaid@utah.gov
Kim Gibb	801-556-8198	kgibb@utah.gov
Matt Spillman	801-698-2186	mspillman@utah.gov

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

General Information

2. Rule catchline:

R714-162. Equipment Standards for Heavy Motor Vehicle, Trailer and Bus Safety Inspections

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 Subsections 53-8-204(5), which requires the Division of Highway Patrol (Division) to make rules:

- a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway;
- b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely;
- c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections;
- d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate;
- e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students;
- f) establishing requirements:
 - i) designed to protect consumers from unwanted or unneeded repairs or adjustments;
 - ii) for maintaining safety inspection records;
 - iii) for providing reports to the Division; and
 - iv) for maintaining and protecting safety inspection certificates;
- g) establishing procedures for a motor vehicle that fails a safety inspection;
- h) setting bonding amounts for safety inspection stations if bonds are required under Subsection (3)(a); and
- ii) establishing procedures for a safety inspection station to follow if the station is going out of business; and Subsection 41-6a-1601(2), which requires the Department of Public Safety to make rules setting minimum standards

covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway as required under Title 41, Chapter 6a, Part 16.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments received during 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 by Subsections 53-8-204(5) and 41-6a-1601(2), and is necessary in order to establish safety standards for heavy motor vehicle, trailer and bus equipment and safe operation, and procedures and requirements to ensure that heavy motor vehicle, trailer and bus inspections are conducted by qualified individuals in a safe environment using safe equipment for the protection of both consumers and employees; to establish requirements for maintaining and protecting records and providing reports to the Division; to establish procedures for a vehicle that fails an inspection; to set bonding amounts when required; and to establish procedures for when a safety inspection station goes out of business. The standards set forth in this rule are used by the state to inspect heavy trucks, trailers and buses. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Tim Kincaid, Captain	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R909-19	Filing No. 53052
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Agency Information

1. Department:	Transportation
Agency:	Motor Carrier
Room no.:	First Floor Administration Suite
Building:	Calvin Rampton
Street address:	4501 S 2700 W
City, state, zip:	Salt Lake City, UT 84129
Mailing address:	PO Box 148455
City, state, zip:	Salt Lake City, UT 84114-8455

Contact person(s):

Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

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

General Information

2. Rule catchline:

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

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 Transportation (Department) promulgated this rule under the authority of Title 72, Chapter 9, Motor Carrier Safety Act, which authorizes the Department to make rules to administer and enforce the act, including provisions for required equipment, operation, and certification of tow truck operators. More specifically, Section 72-9-603 authorizes the Department to set maximum rates for the towing, storage, and administrative fee and establishes authorized towing certification requirements and the posting of tow rates.

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 written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Section 72-9-603 requires the Department to maintain an administrative rule regulating areas of the tow truck motor carrier industry that this rule controls. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R916-1	Filing No. 52109
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Agency Information

1. Department:	Transportation	
Agency:	Operations, Construction	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R916-1. Advertising and Awarding Construction Contracts
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 72-1-201 and Subsection 63G-6a-107.7(5) authorize the Department of Transportation (Department) to make rules necessary to conduct highway construction projects. This rule covers some of the activities required to complete highway construction projects.

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 received no written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes guidelines the Department follows advertising, awarding, and executing construction contracts. It is a necessary tool for hiring contractors to design and build highway construction projects. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	05/13/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R916-2	Filing No. 52117
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Agency Information

1. Department:	Transportation	
Agency:	Operations, Construction	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

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

General Information

2. Rule catchline:

R916-2. Prequalification of Contractors

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 72-1-201(h) requires the Department of Transportation (Department) to make rules for administering the Department state transportation systems, and programs. Section 63G-6a-106 grants the Department authority to manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value.

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 received zero written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes procedures for prequalifying contractors desiring to submit bids and proposals for Department construction projects. Prequalifying contractors is a tool the Department uses to manage and supervise construction procurement to ensure taxpayers receive the best value for the tax dollars invested in designing and building transportation systems. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	05/10/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R916-3	Filing No.	52116
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Agency Information

1. Department:	Transportation
Agency:	Operations, Construction
Room no.:	First Floor Administration Suite
Building:	Calvin Rampton

Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

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

General Information

2. Rule catchline:

R916-3. Design-Build Contracts

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 63G-6a-1402(3)(a) authorizes the Department of Transportation (Department) to award a design-build transportation project contract for any transportation project by following the requirements of Section 63G-6a-1402. It requires the Department to make rules, under the Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

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 received no written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Subsection 63G-6a-1402(3)(a)(ii) requires the Department to have an administrative rule that establishes requirements for the procurement of its design-build transportation project contracts. Rule R916-3 satisfies this requirement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	5/10/2021
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Becky Lewis	801-965-4026	blewis@utah.gov
Please address questions regarding information on this notice to the agency.		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R926-9	Filing No. 52142

General Information

2. Rule catchline:
R926-9. Establishment, Designation, and Operation of Tollways
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 72-6-118 requires the Department of Transportation (Department) to make rules necessary to establish and operate tollways on state highways.
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 written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required by Section 72-6-118, which still in effect. Therefore, this rule should be continued.

Agency Information

1. Department:	Transportation	
Agency:	Program Development	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	05/10/2021
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Plant Industry

No. 53372 (Amendment) R68-27: Cannabis Cultivation
Published: 04/01/2021
Effective: 05/15/2021

No. 53370 (Repeal) R277-511: Academic Pathway to Teaching (APT) Level 1 License
Published: 04/01/2021
Effective: 05/24/2021

No. 53371 (Amendment) R277-617: Smart School Technology Program
Published: 04/01/2021
Effective: 05/24/2021

Commerce

Administration

No. 53373 (Amendment) R151-2: Government Records Access and Management Act Rule
Published: 04/15/2021
Effective: 05/24/2021

Environmental Quality

Air Quality

No. 53312 (Amendment) R307-101: Version of Code of Federal Regulations Incorporated by Reference
Published: 03/01/2021
Effective: 05/06/2021

Real Estate

No. 53227 (Amendment) R162-2g: Real Estate Appraiser Licensing and Certification Rules
Published: 03/01/2021
Effective: 04/28/2021

No. 53313 (Amendment) R307-210: Standards of Performance for New Stationary Sources
Published: 03/01/2021
Effective: 05/06/2021

Education

Administration

No. 53366 (Amendment) R277-214: Utah Professional Practices Advisory Commission Criminal Background Review
Published: 04/01/2021
Effective: 05/24/2021

No. 53314 (Amendment) R307-214: National Emission Standards for Hazardous Air Pollutants
Published: 03/01/2021
Effective: 05/06/2021

No. 53368 (Repeal) R277-504: Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure
Published: 04/01/2021
Effective: 05/24/2021

Governor

Economic Development

No. 53365 (Repeal) R357-2: Targeted Business Tax Credit
Published: 04/01/2021
Effective: 05/10/2021

No. 53369 (Repeal) R277-509: Licensure of Student Teachers and Interns
Published: 04/01/2021
Effective: 05/24/2021

No. 53364 (Amendment) R357-15a: Targeted Business Tax Credit Rule
Published: 04/01/2021
Effective: 05/10/2021

NOTICES OF RULE EFFECTIVE DATES

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 53359 (Amendment) R414-60: Limitations
Published: 04/01/2021
Effective: 05/12/2021

No. 53360 (Amendment) R414-510: Intermediate Care
Facility for Persons with Intellectual Disabilities Transition
Program and Education
Published: 04/01/2021
Effective: 05/12/2021

Center for Health Data, Vital Records and Statistics
No. 53374 (Repeal and Reenact) R436-2: Infants of
Unknown Parentage; Foundling Registration
Published: 04/15/2021
Effective: 05/26/2021

Human Services

Recovery Services
No. 53388 (Amendment) R527-250: Emancipation
Published: 04/15/2021
Effective: 05/24/2021

Insurance

Administration
No. 53271 (Amendment) R590-102: Insurance Department
Fee Payment Rule
Published: 01/15/2021
Effective: 05/24/2021

No. 53271 (Change in Proposed Rule) R590-102:
Insurance Department Fee Payment Rule
Published: 04/15/2021
Effective: 05/24/2021

Title and Escrow Commission
No. 53375 (Amendment) R592-6: Unfair Inducements and
Marketing Practices in Obtaining Title Insurance Business
Published: 04/15/2021
Effective: 05/24/2021

Natural Resources

Wildlife Resources
No. 53332 (Amendment) R657-62: Deployed Military
Published: 03/15/2021
Effective: 05/04/2021

Public Safety

Driver License
No. 53384 (Repeal) R708-18: Regulatory and
Administrative Fees
Published: 04/15/2021
Effective: 05/25/2021

End of the Notices of Rule Effective Dates Section