

# UTAH STATE BULLETIN

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 02, 2021, 12:00 a.m., and June 15, 2021, 11:59 p.m. are included in this, the July 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 Rules being repealed are completely struck out.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 August 02, 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 October 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.

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-28	Filing ID 53566

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R68-28. Cannabis Processing
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Changes are needed to make the rule consistent with S.B. 192 passed during the 2021 General Session, and to address issues that have arisen related to management of the program.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The definition of board is added, consistent with the statutory changes. Requirements are added to allow for the transfer of a cannabis cultivation license. Logo requirements are added for signage outside of a cannabis production establishment, as required by S.B. 192 (2021). Labeling requirements are clarified to ensure only the most necessary information is required to be on a product label. Purity requirements are added for products with synthetic or derivative cannabinoids, consistent with S.B. 192 (2021).

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget. These changes clarify existing rule. Fees charged by the Department of Agriculture and Food and compliance requirements are not changing.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because they do not regulate or operate as cannabis cultivation licensees.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There are no anticipated costs or savings to small businesses. The licensing fees and regulatory requirements for cannabis processing are not changing.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There are no anticipated costs or savings to non-small businesses. The licensing fees and regulatory requirements for cannabis processing are not changing.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There are no anticipated costs or savings to other persons because they do not regulate cannabis processing or operate as processing licensees.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
The compliance costs for affected persons will not change. The regulatory and fee requirements for cannabis processing licensees are not changing with these changes.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
This rule will not have any fiscal impact on businesses in Utah. Craig W. Buttars, Commissioner
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>



Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approves the regulatory impact analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Subsection 4-41a-103(5)	Subsection 4-41a-302(3)(b)(ii)	Subsection 4-41a-404(3)

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/02/2021

<b>10. This rule change MAY become effective on:</b>	08/09/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	06/04/2021
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**R68. Agriculture and Food, Plant Industry.**

**R68-28. Cannabis Processing.**

**R68-28-1. Authority and Purpose.**

1) Pursuant to Subsections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis processing license.

**R68-28-2. Definitions.**

1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

2a) "Cannabis" means any part of a marijuana plant.

b) "Cannabis" does not mean, for the purposes of this rule, industrial hemp.

3) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Board" means the Cannabis Production Establishment Licensing Advisory Board, created in Section 4-41a-201.1.

[4]5) "Cannabis concentrate" means the product of any chemical or physical process applied to cannabis biomass that concentrates or isolates the cannabinoids contained in the biomass.

[5]6) "Department" means the Utah Department of Agriculture and Food.

[6]7) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

[7]8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

[8]9) [-] "Cannabis derivative product" means a product made using cannabis concentrate.

[9]10) "Cannabis plant product" means any portion of a cannabis plant intended to be sold by a medical cannabis pharmacy in a form that is recognizable as a portion of a cannabis plant.

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1[4]11) "Cannabis processing facility" means a person that:

- a) acquires or intends to acquire cannabis from a cannabis production establishment;
- b) possesses cannabis with the intent to manufacture a cannabis product;
- c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis concentrate; and
- d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

1[4]2) "Cannabis processing facility agent" means an individual who:

- a) is an employee of a cannabis processing facility; and
- b) holds a valid cannabis production establishment agent registration card.

1[2]3) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

- a) authorizes an individual to act as a cannabis production establishment agent; and
- b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

1[3]4) "Lot" means the quantity of:

- a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
- b) trim, leaves or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

1[4]5) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

**R68-28-3. Cannabis Processing Facility License.**

1) A cannabis processing facility license allows the licensee to receive cannabis from a cannabis production facility.

2) A Tier 1 cannabis processing facility license allows the licensee to:

- a) create cannabis concentrate;
- b) create cannabis derivative product; and
- c) package and label final product.

3) A Tier 2 cannabis processing facility license allows the licensee to package and label cannabis and cannabis final product.

4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, copy of current Utah manufactured food establishment registration, and other applicable documents required in the application packet to be accepted and processed by the department.

5) Prior to approving an application, the department may contact the applicant and request additional supporting documentation or information.

6) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

7) Each cannabis processing facility license shall expire one calendar year from the date of licensure.

8) An application for renewals shall be submitted to the department 30 days prior to expiration.

9) If the renewal application is not submitted 30 days prior to the expiration date, the licensee may not continue to operate.

10) A license may not be sold or transferred except as set forth in Section R68-28-18.

**R68-28-4. Cannabis Processing Facility Requirements.**

1) A cannabis processing facility operating plan shall contain a blue[-]print of the facility containing the following information:

- a) the square footage of the areas where cannabis is to be extracted;
- b) the square footage of the areas where cannabis or cannabis products are to be packaged and labeled;
- c) the square footage of the areas where cannabis products are manufactured;
- d) the square footage and location of storerooms for cannabis awaiting extraction;
- e) the square footage and location of storerooms for cannabis awaiting further manufacturing;
- f) the area where finished cannabis and cannabis products are stored;
- g) the location of toilet facilities and hand washing facilities;
- h) the location of a break room and location of personal belonging lockers;
- i) the location of the areas to be used for loading and unloading of cannabis and cannabis products; and
- j) the total square footage of the overall cannabis processing facility.

2) A cannabis processing facility shall have written emergency procedures to be followed in case of:

- a) fire;
- b) chemical spill; or
- c) other emergency at the facility.

3) A cannabis processing facility shall have a written plan to handle potential recall and destruction of cannabis due to contamination.

4) A cannabis processing facility shall use a standardized scale that is registered with the department when cannabis is:

- a) packaged for sale by weight;
- b) bought and sold by weight; or
- c) weighed for entry into the inventory control system.

5) A cannabis processing facility shall compartmentalize each area in the facility based on function and shall limit access between compartments.

6) A cannabis processing facility shall limit access to the compartments to the appropriate agents.

7) A cannabis processing facility creating cannabis derivative product shall develop standard operating procedures.

8) Pursuant to Subsection 4-41a-403(4)(b), a cannabis processing facility may use signage on the property that includes a logo, as long as the logo does not include:

- a) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis;
- b) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;
- c) content, symbol, or imagery that the cannabis processing facility knows or should know appeals to children;
- d) imagery featuring a person using the product in any way;
- e) any recreationally oriented subject; or
- f) any statement, design, or representation, picture or illustration that is obscene or indecent.

**R68-28-5. Cannabis Extraction Requirements.**

1) A cannabis processing facility shall ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least ninety-nine percent purity.

2) A cannabis processing facility shall use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present.

3) A cannabis processing facility using carbon dioxide (CO<sub>2</sub>) gas extraction system shall use a professional grade closed loop CO<sub>2</sub> gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO<sub>2</sub> shall be at least ninety-nine percent purity.

4) Closed loop systems hydrocarbon or CO<sub>2</sub> extraction systems shall be commercially manufactured and bear a permanently affixed and visible serial number.

5) A cannabis processing facility using a closed loop system shall, upon request, provide the department with certification from a licensed engineer stating the system is:

- a) safe for its intended use;
- b) commercially manufactured, and
- c) built to conform to recognized and generally accepted good engineering practices, such as:
  - i) the American Society of Mechanical Engineers (ASME);
  - ii) American National Standards Institute (ANSI);
  - iii) Underwriters Laboratories (UL); or
  - iv) The American Society for Testing and Materials (ASTM).

6) The certification document shall contain the signature and stamp of the certifying professional engineer and the serial number of the extraction unit being certified.

7) A cannabis processing facility shall use food grade ingredients to create cannabis derivative product.

8) A cannabis processing facility may use heat, screens, presses, steam distillation, ice water, and other mechanical methods which do not employ solvents or gases.

9) A cannabis processing facility shall ensure each solvent, with the exception of CO<sub>2</sub>, is extracted in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

10) A cannabis establishment agent using solvents or gases in a closed loop system shall be fully trained in the use of the system and have direct access to applicable material safety data sheets.

11) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in Rule R68-29.

**R68-28-6. Security Requirements.**

1) At a minimum, each cannabis processing facility shall have a security alarm system on each perimeter entry point and perimeter window.

2) At a minimum, a licensed cannabis processing facility shall have a complete video surveillance system:

- a) with minimum camera resolution of 1280 x 720 pixels or pixel equivalent for analog; and
- b) that retains footage for at least 45 days.
- 3) each camera shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

4) Controlled areas included:

- a) any entrances and exits, or ingress and egress vantage points;

b) any areas where cannabis or cannabis products are stored;

c) any areas where cannabis or cannabis products are extracted;

d) any areas where cannabis or cannabis products are manufactured, packaged, or labeled; and

e) any areas where cannabis waste is being moved, processed, stored or destroyed.

5) Each camera shall record continuously.

6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Any gate or entry point must have lighting sufficient to record activity occurring in low light conditions.

9) Each visitor[s] to a cannabis processing facility shall be required to display an identification badge issued by the facility while on the premises.

10) At all times, visitors shall be escorted by a cannabis processing facility agent.

11) A cannabis processing facility shall keep and maintain a visitors log showing:

- a) the full name of each visitor entering the facility;
- b) the time of arrival;
- c) the time of departure; and
- d) the purpose of the visit.

12) The cannabis processing facility shall keep the visitors log for a minimum of one year.

13) The cannabis processing facility shall make the visitor log available to the department upon request.

**R68-28-7. Inventory Control.**

1) Each batch or lot of cannabis, cannabis derivative product, cannabis product, test sample, or cannabis waste shall have a unique identifier in the inventory control system.

2) Each batch or lot of cannabis, cannabis derivative product, cannabis product, sample, or cannabis waste shall be traceable to the lot.

3) Unique identification numbers may not be reused.

4) Each batch, lot, or sample of cannabis shall have a unique identification number that is displayed on a physical tag.

5) The tag shall be legible and placed in a position that can be clearly read.

6) The following shall be reconciled in the inventory control system at the close of each business each day:

- a) date and time material containing cannabis are being transported to a cannabis production establishment or medical cannabis pharmacy;
- b) each sample used for testing and the test results;
- c) a complete inventory of material containing cannabis;
- d) cannabis product by unit count;
- e) weight per unit of product;
- f) weight and disposal of cannabis waste materials;
- g) the identity of who disposed of the cannabis waste and the location of the waste receptacles; and
- h) theft or loss or suspected theft or loss of material containing cannabis.

7) A receiving cannabis processing facility shall document in the inventory control system any material containing cannabis

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received, and any difference between the quantity specified in the transport manifest and the quantity received.

8) A cannabis processing facility shall immediately upon receipt of THC extract from a licensed industrial hemp processor enter the following information into the inventory control system:

- a) the amount of THC extract received;
- b) the name, address, and licensing number of the industrial hemp processor;
- c) the weight per unit of product received; and
- d) the assigned unique identification number.

### **R68-28-8. Cannabis Processing Facility Agents.**

1) A cannabis processing facility shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the registration fee.

3) The cannabis processing facility agent registration card shall contain:

- a) the full name of the agent;
- b) the name of the cannabis processing establishment;
- c) the job title or position of the agent; and
- d) a photograph of the agent.

4) A cannabis processing facility is responsible to ensure that each agent has received:

- a) the department approved training as specified in Section 4-41a-301; and
- b) any task specific training as outlined in the operating plan submitted to the department.

5) A cannabis processing facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) Each cannabis production establishment agent shall have their state issued identification card in their possession to certify the information on their badge is correct.

7) Upon termination, the identification badge of an agent shall be immediately returned to the department by the cannabis processing facility.

### **R68-28-9. Minimum Storage and Handling Requirements.**

1) A cannabis processing facility shall store cannabis, cannabis concentrate, or cannabis product in a separate location from outdated, damaged, deteriorated, misbranded, or adulterated product or product whose containers or packaging have been opened or breached.

2) Cannabis, cannabis concentrate, and cannabis product shall be stored at least six inches off the ground.

3) Storage areas shall:

- a) be maintained in a clean and orderly condition; and
- b) be free from infestation by insects, rodents, birds, or vermin.

4) A cannabis processing facility shall:

- a) track and label each cannabis plant product and cannabis concentrate;
- b) ensure each unfinished product is stored in a secure location; and
- c) immediately after completion of the process or at the end of the scheduled business day return to a secure location.

5) If a manufacturing process cannot be completed at the end of a working day, the processor shall securely lock the processing

area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

### **R68-28-10. Product Appearance and Flavor.**

1) A cannabis processing facility may not produce a cannabis product that is designed to mimic a candy product.

2) A cannabis processing facility may not produce a product that includes a candy-like flavor or another flavor the facility knows or should know appeals to children.

3) A cannabis processing facility may use only the following artificial flavors:

- a) apple;
- b) banana;
- c) cherry;
- d) grape;
- e) lemon;
- f) mint;
- g) orange;
- h) raspberry;
- i) strawberry;
- j) vanilla; or
- k) watermelon.

4) Cannabis or cannabis product may retain the natural flavor provided the flavor is not candy-like or another flavor the facility knows or should know appeals to children.

5) A cannabis processing facility may not shape a cannabis product in any way to appeal to children.

### **R68-28-11. Processing of Cannabis and Cannabis Product.**

1) A cannabis processing facility shall process, manufacture, package, and label cannabis and cannabis product in accordance with 21 CFR 111, "Current Good Manufacturing, Packaging, Labeling, or Holding Operation for Dietary Supplements."

2) Cannabis and cannabis product shall be packaged in child-resistant packaging in accordance with 16 CFR 1700.

3) A cannabis processing facility shall package cannabis or cannabis product in accordance with this rule and Section 4-41a-602 prior to transportation to a medical cannabis pharmacy.

4) Any container or packaging containing cannabis or cannabis product shall protect the product from contamination and shall not impart any toxic or deleterious substance to the cannabis or cannabis product.

5) Cannabis cultivation byproduct shall either be:

a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

b) destroyed according to Section 4-41a-405.

6) Cannabis concentrate and product produced by cannabis processing facilities shall be tested pursuant to Rule R68-29.

7) If a cannabis product contains derivative or synthetic cannabinoids they shall be isolated to a purity of greater than 95%, as required by Section 4-41a-603(3).

8) A cannabis product may vary in the cannabis product's labeled cannabinoid profile by up to 10% of the indicated amount of a given cannabinoid, by weight.

### **R68-28-12. Labeling of Cannabis and Cannabis Product.**

1) The text used on all labeling shall be printed in at least 8-point font and may not be in italics.

2) A cannabis processing facility shall label cannabis and cannabis product before the sale of the cannabis or cannabis product to a medical cannabis pharmacy.

3) The label shall be securely affixed to the package and be in legible English.

4) A label for cannabis flower shall include the following information in the order as listed:

- a) the name of the cannabis cultivation facility;
- b) the name of the cannabis processing facility;
- c) the cannabis processing establishment licensing number;

d) the lot number;

e) the date of harvest;

f) the date of final testing;

g) the batch number;

h) the date on which the product was packaged;

i) the cannabinoid profile, potency levels, and terpenoid profile as determined by the independent testing laboratory,

j) the expiration date; and

k) the quantity of cannabis being sold.

5) THC potency levels for cannabis flower shall be listed as total THC.

6) A label for cannabis product shall include the following information:

- a) the name of the cannabis processing facility;
- b) the cannabis processing facility licensing number;
- c) the batch number;

~~d) the date of production;~~

~~[e]~~d) the date of the final testing;

~~[f]~~e) the date on which the product was packaged;

~~[g]~~f) the cannabinoid profile;

~~[h]~~g) the expiration date;

~~[i]~~h) the total amount of THC measured in milligrams;

~~[j]~~i) a list of each ingredient and each major food allergen as identified in 21 U.S.C. 343;

~~[k]~~j) the net weight of the product; and

~~[l]~~k) a disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process.

7) Each cannabis and cannabis product label shall contain the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a ~~qualified~~ recommending medical provider."

8) A cannabis processing facility may include a logo or brand name on the label, as long as it does not obscure the information required on the label.

9) No other information, illustration, or depiction shall appear on the label.

**R68-28-13. Transportation.**

1) A printed transport manifest shall accompany each transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

b) physical address and license number of the receiving location;

c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the receiving cannabis production establishment or medical cannabis pharmacy.

5) The receiving cannabis processing facility, independent laboratory, or medical cannabis pharmacy shall ensure that the cannabis material received is as described in the transport manifest and shall:

a) record the amounts received for each strain into the inventory control system; and

b) document any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

6) During transportation, cannabis shall be:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

7) A cannabis production facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

8) Only the registered agents of the cannabis processing facility may occupy a transporting vehicle.

**R68-28-14. Recall Protocol.**

1) The department may initiate a recall of cannabis or cannabis products if:

a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis product;

b) evidence exists that residual solvents are present on or in cannabis or cannabis product;

c) evidence exists that harmful contaminants are present on or in cannabis or cannabis product; or

d) the department believes or has reason to believe the cannabis or cannabis product is unfit for human consumption.

2) The recall plan of a cannabis processing facility shall include, at a minimum:

a) a designation of at least one member of the staff who serves as the recall coordinator;

b) procedures for identifying and isolating product to prevent or minimize distribution to patients;

c) procedures to retrieve and destroy product; and

d) a communications plan to notify those affected by the recall.

3) The cannabis processing facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis processing facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department has authority to monitor the progress of the recall until the department declares an end to the recall.

6) A cannabis production facility shall notify the department before initiating a voluntary recall.

NOTICES OF PROPOSED RULES

**R68-28-15. Cannabis Waste Disposal.**

1) Solid and liquid wastes generated during cannabis processing shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) Cannabis waste shall be rendered unusable prior to leaving the cannabis processing facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind and incorporate with cannabis fall into two categories:

- a) compostable; or
- b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

- a) food waste;
- b) yard waste; or
- c) vegetable-based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

- a) paper waste;
- b) cardboard waste;
- c) plastic waste; or
- d) soil.

9) Cannabis waste includes:

- a) cannabis plant waste, including roots, stalks, leaves, and stems;
- b) excess cannabis or cannabis products from any quality assurance testing;
- c) cannabis or cannabis products that fail to meet testing requirements; and
- d) cannabis or cannabis products subject to a recall.

**R68-28-16. Change in Operation Plans.**

1) A cannabis processing facility shall submit a notice, on a form provided by the department, prior to making any changes to:

- a) ownership or financial backing of the facility;
- b) the facility's name;
- c) a change in location;
- d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
- e) change to the number of production lines.

2) A cannabis processing facility may not implement changes to the initial approved operation plan without ~~department~~board approval.

3) The ~~department~~board shall respond to the request for changes within 15 business days.

4) The ~~department~~board shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify the reason for the denial of approval for a change to the operation plan.

**R68-28-17. Renewals.**

1) A cannabis processing facility shall submit a notice of intent to renew and the licensing fee to the department within 30 days of license expiration.

2) If the licensing fee and intent to renew are not submitted within 30 days of license expiration, the licensee may not continue to operate.

3) The ~~department~~board may take into consideration significant violations issued in determining license renewals.

**R68-28-18. Cannabis Processing Facility License Transfer.**

1) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization.

2) The department may authorize the transfer of a cannabis processing facility license from the holder of the license to another business entity where any transaction will result in the business entity recorded on the existing cannabis processing facility license to permanently reorganize, dissolve, lapse or otherwise cease to exist as a legal business entity under the laws of the state.

3) A transfer of license ownership form, provided by the department, shall be submitted by the existing cannabis processing facility licensee to the department prior to the cannabis processing facility license transfer.

4) The existing cannabis processing facility licensee shall obtain department approval of the transfer of its cannabis processing facility license prior to the license transfer.

5) The department may deny a cannabis processing facility license transfer to any proposed transferee for any of the following reasons:

- a) the business entity fails to meet the qualifications for a cannabis processing facility license; or
- b) the transfer of the cannabis processing facility license would lead to disruption in the supply of cannabis to the market.

6) A business entity may not begin operations until it has received a cannabis processing facility license from the department issued in its name.

**R68-28-1[8]9. Violation Categories.**

1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including:

- a) cannabis sold to an unlicensed source;
- b) cannabis purchased from an unlicensed source;
- c) refusal to allow inspection;
- d) failure to comply with testing requirements;
- e) a test result for high pesticide residue in the cannabis produced or cannabis product;
- f) a test result for high residual solvents, heavy metal, microbials, molds, or other harmful contaminants;
- g) failure to maintain required cleanliness and sanitation standards;

- h) unauthorized personnel on the premises;
- i) permitting criminal conduct on the premises;
- j) possessing, manufacturing, or distributing cannabis products that the person knows or should know appeal to children; or
- k) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, which amounts to a public safety violation as described in this Subsection.

2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:

- a) failure to maintain alarm and security systems;
  - b) failure to keep and maintain records;
  - c) failure to maintain traceability;
  - d) failure to follow transportation requirements;
  - e) failure to follow the waste and disposal requirements;
  - f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule which amounts to a regulatory violation as described in this Subsection; or
  - g) failure to maintain standardized scales.
- 3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including:
- a) an unauthorized change to the operating plan;
  - b) failure to notify the department of changes to the operating plan;
  - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
  - d) failure to follow the operating plan as approved by the department;
  - e) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments which amounts to a licensing violation as described in this Subsection; or
  - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.
- 5) The department may enhance or reduce the penalty based on the seriousness of the violation.

**KEY: cannabis processing, cannabis production establishment**  
**Date of Enactment or Last Substantive Amendment:** ~~August 10, 2020~~**2021**  
**Authorizing, and Implemented or Interpreted Law:** 4-41a-103(5); 4-41a-404(3); 4-41a-701(3); 4-41a-302(3)(b)(ii); 4-2-103(1)(i); 4-41a-405(2)(b)(iv); 4-41a-801(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-29	Filing ID 53567

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov

Cody James	801-982-2376	Codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R68-29. Quality Assurance Testing on Cannabis
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Changes are needed to clarify this rule, add definitions, and make it consistent with changes passed in S.B. 192 during the 2021 General Session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the differences between the repealed rule and the reenacted rule):</b>
Definitions are added and clarified to make this rule consistent with the current statute. Definitions and requirements are added for synthetic and derivative cannabinoids. In Section R68-29-3, changes are added to clarify testing requirements consistent with S.B. 192 (2021), including the allowance of propagation of results. Changes are also added to address testing requirements for industrial hemp waste.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget. These changes provide clarifications to the existing program but do not add significant additional cost or change the amount of revenue that is brought in by the Department of Agriculture and Food (Department).
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because they do not regulate medical cannabis and are not licensed under this program.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There are no anticipated costs or savings to small businesses because the fees charged by the Department and compliance required will not change. This rule is merely being clarified.

**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 because the fees charged by the Department and compliance required will not change. This rule is merely being clarified.

**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 other persons because the fees charged by the Department and compliance required will not change. This rule is merely being clarified.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The compliance costs for affected persons will not change. The changes just clarify the requirements of this rule.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

These rule changes will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection		
4-41a-701(3)		

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	06/04/2021
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**R68. Agriculture and Food, Plant Industry.**  
**R68-29. Quality Assurance Testing on Cannabis.**  
**R68-29-1. Authority and Purpose.**

1) Pursuant to Subsection 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product potency testing and sets limits for water activity, foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.



**R68-29-2. Definitions.**

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- a) pesticides;
- b) heavy metals;
- c) solvents;
- d) microbial life;
- e) toxins; or
- f) foreign matter.

2) "Analyte" means a substance or chemical component that is undergoing analysis.

3) "Batch" means a quantity of:

a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

5) "Cannabis" means any part of the marijuana plant.

6) "Cannabi[s]noid concentrate" means:

~~a) the product of any chemical or physical process [applied to cannabis biomass that concentrates or isolates the cannabinoids contained in the biomass.]~~  
a) the product of any chemical or physical process [applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; or

b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

7) "Cannabis cultivation facility" means a person that:

- a) possesses cannabis;
- b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

9) "Cannabis derivative product" means a cannabis product made using cannabis concentrate.

10) "Cannabis plant product" means any portion of a cannabis plant intended to be sold ~~[by a medical cannabis pharmacy]~~ in a form that is recognizable as a portion of a cannabis plant.

11) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis concentrate; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

12) "Cannabis product" means a product that:

- a) is intended for human use; and
- b) contains cannabis or delta 9-tetrahydrocannabinol.

13) "CBD" means cannabidiol (CAS 13956-29-1).

14) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

15) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for ~~[that testing was performed]~~ the performed testing.

16) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS #1972-08-03, the primary psychotropic cannabinoid in cannabis.

1[6]7) "Department" means the Utah Department of Agriculture and Food.

18) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert a naturally occurring cannabinoid into another cannabinoid.

1[7]9) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

1[8]20) "Foreign matter" means:

a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient, including seeds.

1[9]21) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

2[0]2) "Industrial hemp waste" means:

~~a) a cannabinoid extract derived from industrial hemp with greater than 0.3% THC by mass; or~~

~~b) industrial hemp biomass with a THC concentration of less than 0.3% by dry weight.]~~

a) a cannabinoid extract above 0.3% total THC derived from verified industrial hemp biomass; or

b) verified industrial hemp biomass with a total THC concentration of less than 0.3% by dry weight.

2[4]3) "Lot" means the quantity of:

a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

2[2]4) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

2[3]5) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the application or effect of a pesticide.

2[4]6) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis plant product, cannabis concentrate, or cannabis product from a cannabis production establishment who is:

a) an employee of the department;

b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or

NOTICES OF PROPOSED RULES

c) a person authorized by the department to perform sampling.

2[5]7) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.

28) "Synthetic cannabinoid" means any cannabinoid that: a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and

b) is not a derivative cannabinoid. 2[6]9) "THC" means delta-9-tetrahydrocannabinol (CAS 1972-08-3).

[27]30) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

31)(a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

(b) "THC analog" does not include the following substances or their naturally occurring acid forms:

- (i) cannabichromene (CBC), CAS# 20675-51-8;
(ii) cannabicyclol (CBL), CAS# 21366-63-2;
(iii) cannabidiol (CBD), CAS# 13956-29-1;
(iv) cannabidivarin (CBDV), CAS# 24274-48-4;
(v) cannabielsoin (CBE), CAS# 52025-76-0;
(vi) cannabigerol (CBG), CAS# 25654-31-3;
(vii) cannabigerovarin (CBGV), CAS# 55824-11-8;
(viii) cannabinal (CBN), CAS# 521-35-7; or
(ix) cannabivarin (CBV), CAS# 33745-21-0.

[28]32) "Total CBD" means the sum of the determined amounts of CBD and CBDA.

[29]33) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

3[0]4) "Unit" means each individual portion of an individually packaged product.

3[1]5) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.

R68-29-3. Required Cannabis, [and] Cannabis Product, and Industrial Hemp Waste Tests.

1) Prior to the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility [must]shall make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.

2) A representative sample of each batch or lot of cannabis plant product shall be tested by an independent cannabis testing laboratory to determine:

- a) the water activity of the sample;
b) the amount of total delta-9-THC, total CBD, and any THC analog know to be present in the sample; and
c) the presence of adulterants in the sample, as specified in table 1.

3) Required testing shall be performed either:

- a) prior to the transfer of the cannabis plant product to a cannabis processing facility; or
b) following the transfer of the cannabis plant product to a cannabis processing facility.

4) If cannabis plant product is tested prior to being transferred to a cannabis processing facility, repeat testing for

microbial contaminants and foreign matter shall be performed following the transfer.

[2) A cannabis cultivation facility may not transfer a cannabis plant product to a cannabis processing facility unless an independent cannabis testing laboratory has tested a representative sample of the cannabis to determine:

- a) the water activity of the sample;
b) the amount of total delta-9-THC and total CBD present in the sample; and
c) the presence of adulterants in the sample, as specified in table 1.]

[3]5) Cannabis cultivation byproduct shall either be:

- a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or
b) destroyed pursuant to Section 4-41a-405.

[4]6) Prior to its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:

- a) the amount of total THC, [and]total CBD, and any THC analog known to be present in the sample; and
b) the presence of adulterants in the sample, as specified in table 1.

c) Any derivative or synthetic cannabinoids present in the cannabis concentrate shall be isolated to a purity of greater than 95%, with a 5% margin of error, as determined by an independent cannabis testing laboratory using liquid chromatography-mass spectroscopy or an equivalent method.

[5]7) Prior to the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:

- a) the water activity of the sample, as determined applicable by the department;
b) the quantity of any cannabinoid or terpene to be listed on the product label; and
c) the presence of adulterants in the sample, as specified in table 1.

[6]8) Testing results for cannabis [plant product and ]cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.

[7]9) Mycotoxin testing of a cannabis plant product, cannabis concentrate, or cannabis product may be required if the department has reason to believe that mycotoxins may be present.

[8]10) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

[9]11) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

1[0]2) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.

1[1]3) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

1[2]4) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.

1[3]5) In the event that tests results cannot be retained in the Inventory Control System, the laboratory shall:

- a) keep a record of test results;
- b) issue a certificate of analysis for required tests; and
- c) retain a copy of the certificate of analysis on the laboratory premises.

16) Plant product that has been classified as industrial hemp waste may enter the state and be held by a medical cannabis cultivation facility until required testing is completed by an independent cannabis testing laboratory. A cannabis cultivation facility may not take ownership of the industrial hemp plant product until testing requirements have been met.

1[4]7) Industrial hemp waste purchased by a cannabis cultivation facility in the form of a plant product or a concentrate must meet department cannabis testing standards as determined by an independent cannabis testing laboratory prior to its transfer to a cannabis cultivation facility.

1[5]8) Industrial hemp waste that is transferred to a cannabis cultivation facility shall be considered to be cannabis for all testing and regulatory purposes of the department.

TABLE 1  
Required Tests by Sample Type

Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X
Foreign Matter	Required	Required	Required
Potency	Required	Required	Required
Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required
Mycotoxins	X	Required	X

**R68-29-4. Sampling Cannabis and Cannabis Products.**

1) The entity that requests testing of a cannabis plant product lot or cannabis concentrate batch, or cannabis product batch shall make the entirety of the lot or batch available to the sampling technician.

2) The lot or batch being sampled shall be contained in a single location and physically separated from other lots or batches.

3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.

4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the selection of the sample.

5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, that is ISO 17025 compliant, maintained by the laboratory that will perform the testing.

6) When collecting the representative sample, the sampling technician shall:

- a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;
- b) place tamper proof tape on the container; and
- c) appropriately label the sample pursuant to Section R68-30-6.

7) For cannabis plant product lots the minimum representative sample shall be taken according to the following schedule:

- a) 10 subunits with an average weight of one gram each for lots weighing 5 kilograms or less;
- b) 16 subunits with an average weight of one gram each for lots weighing 5.01-9 kilograms;
- c) 22 subunits with an average weight of one gram each for lots weighing 9.01-14 kilograms;
- d) 28 subunits with an average weight of one gram each for lots weighing 14.01-18 kilograms;
- e) 32 subunits with an average weight of one gram each for lots weighing 18.01-23 kilograms.

8) For cannabis concentrate the minimum representative sample shall be taken according to the following schedule:

- a) 10 mL for batches of one liter or less; or
- b) 20 mL for batches of four liters of less.

9) For cannabis products in their final product form the following minimum number of sample units must be taken, the combined total weight of which must be at least 10 grams, not including packaging materials:

- a) four units for a sample product batch with 5-500 products;
- b) six units for a sample product batch with 501-1000 products;
- c) eight units for a sample product batch with 1,001-5,000 products; and
- d) ten units for a sample product batch with 5,001-10,000 products.

10) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

**R68-29-5. Moisture Content Testing and Water Activity Standards.**

1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

**R68-29-6. Foreign Matter Standards.**

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

- a) the sample contains foreign matter visible to the unaided human eye;
- b) the sample is found to contain microscopic foreign matter estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or
- c) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

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**R68-29-7. Potency Testing.**

1) A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall have their potency determined and listed on a COA as total [~~delta-9~~]THC<sub>1</sub> [~~and~~]total CBD, and the total concentration of any THC analog known to be present.

**R68-29-8. Microbial Standards.**

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 2.

TABLE 2  
Microbial Analytes and Action Levels

Material	Microbial Limit Requirement (cfu)
Flower	Total Aerobic Microbial Count ≤100,000
	Absence of E. Coli and Salmonella spp.
	Absence of Aspergillus
Concentrated oil	Total Aerobic Microbial Count ≤10,000
	Total Combined Yeast and Mold Count ≤1,000
Wax	Absence of STEC
Resin	Absence of Pseudomonas
	Absence of Staph
	Absence of E. coli
Tablet	Total Aerobic Microbial Count ≤10,000
Capsule	Total Combined Yeast and Mold Count ≤1,000
Liquid Suspension	Absence of E. Coli and Salmonella spp.
Gelatinous cube	Absence of Staph
Transdermal	Total Aerobic Microbial Count ≤100
	Total Yeast and Mold ≤100
	Absence of Pseudomonas
	Absence of Staph
	Absence of E. coli

**R68-29-9. Pesticide Standards.**

1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

TABLE 3  
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2

Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Pacllobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

6) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

**R68-29-10. Residual Solvent Standards.**

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

- a) a component of the product formulation;
- b) listed as an ingredient; and
- c) generally considered to be safe for the intended form of use.

TABLE 4  
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS) Registry number	Action level ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380

1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
2-Butanone 78-93-3		5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

- 2) Xylenes is a combination of the following:
- a) 1,2-dimethylbenzene;
  - b) 1,3-dimethylbenzene;
  - c) 1,4-dimethylbenzene; and
  - d) ethyl benzene.

**R68-29-11. Heavy Metal Standards.**

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for heavy metals if the results exceed the limits provided in Table 5.

TABLE 5  
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

**R68-29-12. Mycotoxin Standards.**

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

TABLE 6  
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

**KEY: cannabis testing, quality assurance, cannabis laboratory**  
**Date of Enactment or Last Substantive Amendment: [December 18, 2020]2021**  
**Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R68-32</b>	<b>Filing ID</b>	<b>53565</b>
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**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
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Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

Clarifications in the rule are needed to help the Department of Agriculture and Food (Department) improve management of the industrial hemp and medical cannabis programs. The need for these changes has become

evident as the Department has implemented the allowance of the sale of industrial hemp to medical cannabis cultivators.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

A definition for cannabinoid extract is added and the definition of industrial hemp waste is clarified. A requirement is added that a certificate of analysis or other verification of testing be shared with the Department prior to the sale of industrial hemp waste. Section R68-32-5 is removed as no longer needed. The requirements of transportation of industrial hemp waste are clarified. A violation is added regarding recordkeeping.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

There are no anticipated costs or savings to the state budget. These changes provide clarifications to the existing program but do not add significant additional cost or change the amount of revenue that is brought in by the Department.

**B) Local governments:**

There are no anticipated costs or savings to local governments because they do not regulate industrial hemp or medical cannabis and are not licensed under either program.

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

There are no anticipated costs or savings to small businesses because the fees charged by the Department and compliance required will not change. This rule is merely being clarified.

**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 because the fees charged by the Department and compliance required will not change. This rule is merely being clarified.

**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 other persons because the fees charged by the Department and

compliance required will not change. This rule is merely being clarified.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The compliance costs for affected persons will not change. The changes just clarify the requirements of this rule.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule change will not have any fiscal impact on businesses in Utah. Craig W. Buttars, Commissioner

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 4-41a-102	Subsection 4-2-103(1)(i)	Subsection 4-41a-603(3)
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Butters, Commissioner	<b>Date:</b>	06/04/2021
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**R68. Agriculture and Food, Plant Industry.  
R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators.**

**R68-32-1. Authority and Purpose.**

1) Pursuant to Section 4-41a, 4-41a-102, and Subsections 4-2-103(1)(i) and 4-41a-603(3), this rule establishes the procedures governing the sale of industrial hemp waste by an industrial hemp cultivator or processing facility to a cannabis cultivation facility, including procedures for sale approval, extraction, transportation, recordkeeping, testing, and inspection and recall.

**R68-32-2. Definitions.**

- 1) "Batch" means a quantity of:
  - a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;
  - b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or
  - c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.
- 2) "Cannabinoid" means any:

- a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or
- b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
- 3) "Cannabis" means any part of the marijuana plant.
- 4) "Cannabinoid concentrate" means the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass.

- [4]5) "Cannabis cultivation facility" means a person that:
  - a) possesses cannabis;
  - b)i) grows or intends to grow cannabis; or
  - ii) acquires or intends to acquire industrial hemp waste from a holder of an industrial hemp cultivator license under Title 4, Chapter 41, Hemp and Cannabinoid Act, or an industrial hemp processor; and
  - c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

- [5]6) "Cannabis product" means a product that:
  - a) is intended for human use; and
  - b) contains cannabis or tetrahydrocannabinol.

- [6]7) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.

- [7]8) "Department" means the Utah Department of Agriculture and Food.

- [8]9) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

- [9]10) "Industrial hemp" means any part of the cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.

- 1[0]11) "Industrial hemp product" means a cannabinoid extract derived from industrial hemp with a THC concentration of less than 0.3% by dry weight.

- 1[+]2) "Industrial hemp waste" means ~~a cannabinoid extract derived from industrial hemp with greater than 0.3% THC by mass.~~

- (a) a cannabinoid extract above 0.3% total THC derived from verified industrial hemp biomass; or

- (b) verified industrial hemp biomass with a total THC concentration of less than 0.3% by dry weight.

- 1[2]3) "Inventory Control System" means the system described in Section 4-41a-103.

- 1[2]4) "Lot" means the quantity of:
  - a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
  - b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

**R68-32-3. Sale of Industrial Hemp Requirements.**

1) Industrial hemp, industrial hemp product, or industrial hemp waste may be sold by an industrial hemp cultivator or industrial hemp processing facility to a cannabis cultivation facility if:

- a) the industrial hemp waste is derived from industrial hemp biomass that has been certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture;
- b) the industrial hemp cultivator or industrial hemp processing facility has records to substantiate the certification; and

NOTICES OF PROPOSED RULES

- c) the records are available for inspection by the department.
- 2) If an industrial hemp cultivator or industrial hemp processing facility intends to sell industrial hemp, industrial hemp waste, or industrial hemp product that is derived from industrial hemp biomass that was purchased out of state:
  - a) the out of state seller shall provide proof that the biomass was certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture to the industrial hemp cultivator or industrial hemp processing facility; and
  - b) the industrial hemp cultivator or industrial hemp processing facility shall keep record of the certification.

**R68-32-4. Sale of Industrial Hemp - Notification and Approval.**

- 1) Within ten days of~~[Prior to]~~ the sale of industrial hemp, industrial hemp product, or industrial hemp waste by an industrial hemp cultivator or industrial hemp processing facility to a cannabis cultivation facility, the industrial hemp cultivator or processing facility shall:
  - a) notify the department of the potential sale in writing~~[within 10 days of the sale];~~~~and~~
  - b) provide the department with a certificate of analysis showing that the biomass from which the industrial hemp, industrial hemp product, or industrial hemp waste was derived was certified industrial hemp by a state department of agriculture or the U.S. Department of Agriculture~~[-]; and~~
  - c) provide the department with a certificate of analysis or other documentation of test results showing that a representative sample of the industrial hemp, industrial hemp product, or industrial hemp waste has been tested by a licensed cannabis testing laboratory as required by Subsection 4-41a-501(5)(a)(i).
- 2) The department will approve the sale following review of the records of the industrial hemp cultivator or industrial hemp processing facility to ensure compliance with this rule.
- 3) Upon approval of the sale, the department will issue a certificate to the industrial hemp cultivator or industrial hemp processing facility allowing the sale to proceed.
- 4) No industrial hemp waste, industrial hemp product, or industrial hemp may be sold by an industrial hemp cultivator or industrial hemp processing facility unless they have a license in good standing with the department.
- 5) The department will not approve the sale of industrial hemp extract with a THC concentration above 0.3% if the extract was purchased outside of the state.

~~**[R68-32-5. Industrial Hemp Waste and Industrial Hemp Product Extraction.**~~

- ~~1) Extraction of cannabinoid extract by an industrial hemp processing facility to be sold under this rule shall take place in Utah.~~
- ~~2) The industrial hemp processing facility shall keep records of the extraction, including:
 
  - a) how much industrial hemp biomass was processed by the industrial hemp processing facility;
  - b) how much cannabinoid extract was extracted during processing; and
  - c) proof that the extraction took place in Utah.~~
- ~~3) The industrial hemp processing facility shall make any extraction records available for inspection by the department.~~
- ~~4) A cannabis cultivation facility shall not take possession of cannabinoid extract that qualifies as industrial hemp waste without verifying that it has been extracted in Utah.~~

~~**R68-32-[6]5. Transportation.**~~

- ~~1) [Only an agent of a cannabis cultivation facility may transport industrial hemp waste.]Prior to transportation, industrial hemp waste shall meet the testing requirements of Subsection 4-41a-501(5)(a)(i) and Rule R68-29.~~
- ~~2) A printed [transport manifest]certificate of sale shall accompany every transport of industrial hemp waste.~~
- ~~[-----]3) The manifest shall contain the following information:
 
  - ~~a) the industrial hemp cultivator or industrial hemp processing facility address and license number of the departure location;~~
  - ~~b) physical address and license number of the receiving location;~~
  - ~~c) amount of industrial hemp waste that is being transported;~~
  - ~~d) date and time of departure;~~
  - ~~e) estimated date and time of arrival; and~~
  - ~~f) name and signature of each agent accompanying the industrial hemp waste.]~~~~
- ~~3) Each transport of industrial hemp waste shall be recorded in the Industrial Hemp Transportation Permit Log.~~
- ~~4) The [transport manifest]certificate of sale may not be voided or changed after departing from the original industrial hemp cultivator or industrial hemp processing facility.~~
- ~~5) The receiving cannabis cultivation facility shall ensure they are given a copy of the [transport manifest]certificate of sale.~~
- ~~6) The receiving cannabis cultivation facility shall ensure that the industrial hemp waste received is as described in the [transport manifest]certificate of sale and shall record the amounts received into the inventory control system.~~
- ~~7) The receiving cannabis cultivation facility shall document at the time of receipt any differences between the quantity specified in the [transport manifest]certificate of sale and the quantities received in the inventory control system.~~
- ~~8) During transport, the industrial hemp waste shall be:
 
  - a) shielded from the public view;
  - b) in a secure container; and
  - c) temperature controlled if perishable.~~
- ~~9) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting industrial hemp waste is involved in an accident that involves product loss.~~

~~**R68-32-[7]6. Recordkeeping Requirements.**~~

- ~~[-----]1) A cannabis cultivation facility shall ensure that each lot or batch of industrial hemp waste previously purchased from an industrial hemp cultivator or industrial hemp processing facility has a unique identification number in the inventory control system.]~~
- ~~[2]1) Following purchase of industrial hemp waste from an industrial hemp cultivator or industrial hemp processing facility, a cannabis cultivation facility shall ensure that each lot or batch of industrial hemp waste has a unique identification number in the inventory control system.~~
- ~~[-----]3) By November 1, 2020 an industrial hemp cultivator shall ensure that each lot of industrial hemp waste sold to a cannabis cultivation facility shall have a unique identification number in the inventory control system.~~
- ~~[-----]4) By November 1, 2020, an industrial hemp processing facility shall ensure that each batch or lot of industrial hemp waste that is sold to a cannabis cultivation facility shall have a unique identification number in the inventory controls system.]~~
- ~~[5]2) A cannabis cultivation facility shall maintain a record of each purchase of industrial hemp waste, including:~~



a) a copy of the certification that the industrial hemp waste is derived from certified industrial hemp; and

b) if applicable, a copy of the record documenting that the extraction of the cannabinoid extract that qualifies as industrial hemp waste took place in Utah.

~~(6)3~~ Each [R]record[s] shall be made available for inspection by the department.

**R68-32-~~8~~7. Testing Requirements.**

1) Each lot or batch of industrial hemp, industrial hemp product, or industrial hemp waste purchased by a cannabis cultivation facility shall be tested by ~~[an independent cannabis]~~ a licensed cannabis testing laboratory pursuant to the requirements of Section R68-29-3~~[-~~

~~\_\_\_\_\_ a)] prior to transfer of the [when the cannabis cultivation facility takes possession of the] industrial hemp, [industrial hemp product]cannabinoid concentrate, or industrial hemp waste, [; and~~

~~\_\_\_\_\_ b) when the industrial hemp, industrial hemp product, or industrial hemp waste is processed into its final product form.]~~

2) Testing shall be documented on a certificate of analysis and recorded in the inventory control system.

3) Final products derived from [H]industrial hemp, industrial hemp product, or industrial hemp waste [is]are subject to the same testing requirements as other cannabis product.

4) United States Department of Agriculture (USDA) or state equivalent certified industrial hemp biomass may be transferred to a medical cannabis cultivator if it meets the requirements of Rule R68-29.

**R68-32-~~9~~8. Inspection and Recall.**

1) The department has the right to conduct a random inspection of industrial hemp processing facilities, industrial hemp cultivators, and medical cannabis cultivators that are subject to this rule, including an audit of the following to ensure compliance with Utah state law, rules, and this rule:

a) the records of an industrial hemp processing facility that has sold industrial hemp waste;

b) the records of an industrial hemp cultivator that has sold industrial hemp waste; and

c) the records of a cannabis cultivation facility that has purchased industrial hemp waste.

2) Inspection may take place at any time during normal business hours.

3) A product that is identified as out of compliance may be subject to recall and destruction by the department.

**R68-32-~~10~~9. Violations.**

1) Violations of this rule include:

a) sale or transfer of industrial hemp, industrial hemp product or industrial hemp waste without notifying the department;

b) sale of industrial hemp biomass with a THC level greater than 0.3% by dry weight;

c) a medical cannabis facility allowing industrial hemp waste into the facility without entering it into the inventory control system;

d) a medical cannabis facility allowing industrial hemp waste ~~[product]~~ into the facility without testing;

e) a facility not keeping and maintaining each record required by this rule;

f) a facility falsifying a record required to be kept under this rule;

~~[f]g)~~ a facility denying the department access to the records; and

~~[g]h)~~ transporting industrial hemp, industrial hemp product, or industrial hemp waste to a facility without a ~~[manifest]certificate of sale, [; and]~~

~~[\_\_\_\_\_ h) anyone other than a cannabis cultivation agent transporting industrial hemp, industrial hemp product, or industrial hemp waste to a cannabis cultivation facility.]~~

2) The department shall assess fines of:

a) \$3,000 - \$5,000 for public safety violations;

b) \$1,000 - \$5,000 for regulatory violations; and

c) \$500 - \$5,000 for licensing violations.

3) The department shall calculate fines based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

4) The department may enhance or reduce the penalty based on the seriousness of the violation.

**KEY: industrial hemp waste, industrial hemp processing facility, cannabis cultivation facility**

**Date of Enactment or Last Substantive Amendment: ~~December 18, 2020~~2021**

**Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-41a; 4-41a-102; 4-41a-603(3)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-309	Filing ID 53595

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-309. Appropriate Licensing and Assignment of Teachers

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):  
 This rule is being amended to clarify endorsement requirements for some special education licensees.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):  
 This filing amends the endorsement requirements for licensed educators working with special education students.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**  
 This rule change is not expected to have fiscal impacts on state government revenues or expenditures. The amendments impact only local education agencies (LEAs).

**B) Local governments:**  
 This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments provide additional clarity on how LEAs can comply with federal law regarding special education.

**C) Small businesses** ("small business" means a business employing 1-49 persons):  
 This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments impact only LEAs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):  
 There are no non-small businesses in the industry in question, Elementary and Secondary Schools (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 fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments impact only LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):  
 There are no independent compliance costs for affected persons. The amendments provide additional clarity on how LEAs can comply with federal law regarding special education.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):  
 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. In addition, this rule change is not expected to have direct fiscal impacts on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-6-201(2)(a)	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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.**  
**R277-309. Appropriate Licensing and Assignment of Teachers.**  
**R277-309-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

- (c) Subsection 53E-6-201(2)(a), which authorizes the Board to rank, endorse, or classify licenses.
- (2) The purpose of this rule is to provide criteria for:
  - (a) local school boards to employ educators in appropriate assignments;
  - (b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and
  - (c) the Board and local school boards to satisfy the requirements of ESEA for local school boards to receive federal funds.

**R277-309-2. Definitions.**

- (1) "Co-teaching" means the instructional arrangement in which a general education teacher and a special education teacher deliver core instruction along with specialized instruction, as needed, to a diverse group of students in a single instructional space or class.
- (~~1~~)<sup>2</sup> "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.
- (~~2~~)<sup>3</sup> "Educator license" means an associate, professional, or LEA-specific license issued by the Superintendent under Rule R277-301.
- (~~3~~)<sup>4</sup> "Elementary setting" means an instructional model where students typically have a single class with a single teacher primarily responsible for instruction in all core standards established in Rule R277-700.
- (~~4~~)<sup>5</sup>(~~a~~) "License areas of concentration" has the same meaning as described in Section R277-301-2, including elementary education, secondary education, special education, and career and technical education.
- (~~5~~)<sup>6</sup>(~~a~~) "License endorsement" or "endorsement" has the same meaning as described in Section R277-301-2, including special education mild/moderate, special education severe disabilities, mathematics, English language arts, and dance.
- (~~6~~)<sup>7</sup> "Secondary setting" means an instructional model where students typically rotate among classes taught by multiple teachers that are considered subject matter experts, primarily responsible for instruction in the core standards in an area as established by the Board in Rule R277-700.

**R277-309-3. Required Licensing.**

- (1) All teachers in public schools shall hold a current educator license along with appropriate license areas of concentration and endorsements that is not suspended or revoked by the Board under Section 53E-6-604.
- (2) An LEA shall receive assistance from the Superintendent to the extent of resources available to have all teachers hold a professional license, license area, and endorsement in all areas in which the teacher is assigned.
- (3) An LEA shall only hire a teacher who:
  - (a) holds a current educator license; or
  - (b) is in the process of becoming fully licensed and endorsed.
- (4) In accordance with Section 53E-3-401, if an LEA hires an educator without appropriate licensure, the Superintendent may recommend that the Board withhold the following until the LEA's educators are appropriately licensed:
  - (a) LEA salary supplement funds under Section 53F-2-405 and Rule R277-110; and
  - (b) Educator quality funds under Subsection 53F-2-305(2) and Rule R277-486.

**R277-309-4. Appropriate Licenses, License Areas of Concentration, and Endorsements.**

(1) An educator assigned to teach a class in kindergarten through grade 3 shall hold a current educator license with:

- (a) an early childhood license area of concentration;
- (b) an elementary license area of concentration; or
- (c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(2) An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current educator license with:

- (a) an elementary license area of concentration; or
- (b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(3) An elementary content specialist in Fine Arts or Physical Education shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate K-12 endorsement.

(4) An elementary content specialist in reading or English as a Second Language shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate endorsement.

(5) An elementary content specialist in any content area not listed in Subsections (3) and (4) shall hold a current educator license with an elementary, secondary, special education, or deaf education license area of concentration.

(6) An educator assigned to teach a class in grade 6 in a secondary setting shall hold a current educator license with:

- (a) an elementary license area of concentration;
- (b) a secondary license area of concentration with the appropriate endorsement for all assigned courses; or
- (c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(7) An educator assigned to teach a class in grade 7 or grade 8 in a secondary setting shall hold a current educator license with:

- (a) an elementary or secondary license area of concentration with the appropriate endorsement for all assigned courses; or
- (b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(8) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current educator license with:

- (a) a secondary or a career and technical education license area of concentration with the appropriate endorsement for all assigned courses; or
- (b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(9) A general education teacher in a co-teaching setting shall hold:

- (a) a current educator license;
- (b) an appropriate license area of concentration; and
- (c) an endorsement appropriate for the course.

([9]10)(a) An educator assigned to serve or teach a class of students with disabilities shall hold a current educator license with a special education license area of concentration and [7] special education endorsement; and

(b) [if the] If an educator is the teacher of record of secondary mathematics for students with disabilities, the educator shall also hold the appropriate endorsement for the course, unless in a co-teaching setting with a general educator who is properly licensed and endorsed.

(c) A special education teacher in a co-teaching setting shall hold a special education license area of concentration and special education endorsement.

([10]11) An educator assigned to serve preschool-aged students with disabilities shall hold a current educator license with a preschool special education license area of concentration.

([11]12) An educator assigned to serve deaf and hard of hearing students shall hold:

- (a) a current educator license with a special education license area of concentration and deaf and hard of hearing endorsement; or
- (b) a deaf education license area of concentration.

([12]13) An educator assigned to provide student support services as defined in Rule R277-306 shall hold a current educator license with the appropriate support service license area of concentration.

([13]14) An educator assigned as a school-based or LEA-based specialist shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the LEA.

([14]15) An educator assigned as a principal or vice principal in a school district shall hold a current educator license and a school leadership license area of concentration.

([15]16) An educator assigned in any other position that requires an educator license, as defined by the [district]LEA, shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the district.

([16]17) An educator assigned in an administrative position in a charter school is exempt from Subsections (14) and (15) consistent with Section 53G-5-405.

([17]18) Notwithstanding Subsection R277-309-3(1), an individual may hold a school social work assignment in an LEA without a school social worker license area of concentration.

**KEY: educator, license, assignment**

**Date of Enactment or Last Substantive Amendment: 2021[~~July 23, 2020~~]**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201(2)(a)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-328	Filing ID 53596

**Agency Information**

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111

<b>Mailing address:</b> PO Box 144200		
<b>City, state and zip:</b> Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-328. Educational Equity in Schools
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
During the March 2021 Utah Board of Education - Standards and Assessment Committee meeting, staff presented the current professional learning opportunities regarding equity that are currently being facilitated, including the introduction of the Training Resource Protocol. The Committee recommended that a new Board rule be implemented outlining options for professional learning to be offered regarding diversity, equity, and inclusion.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The summary of the new rule is to provide local education agencies (LEAs) with the standards for educators and LEAs regarding professional learning, and guidelines and requirements for curriculum, and classroom instruction on educational equity.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change may have fiscal impacts on state government revenues or expenditures. It requires Utah State Board of Education (USBE) to establish and deliver a model for professional learning that complies with the rule and to provide LEAs with technical assistance regarding the rule's implementation.
<b>B) Local governments:</b>
This rule change will likely have fiscal impact on local governments' revenues or expenditures. It requires LEAs to provide educators with professional learning regarding educational equity, inclusion and other issues identified in the rule and to make this professional learning available to

parents upon request. The costs to LEAs to comply with these requirements depend upon local implementation decisions and are not directly measurable.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule directly impacts only USBE and LEAs.
<b>D) Non-small businesses</b> ("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 is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule directly impacts only USBE and LEAs.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs for affected persons. This rule directly impacts only USBE and LEAs.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):
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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education
<b>6. A) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

NOTICES OF PROPOSED RULES

this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 53E-3-501(1)(c)(iv)	Article X, Section 3	Subsection 53E-3-502(8)
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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

**10. This rule change MAY become effective on:** 08/09/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.**

**R277-328. Educational Equity in Schools.**

**R277-328-1. 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;

(c) Section 53E-3-501(1)(c)(iv) which states the board shall establish rules and minimum standards governing curriculum and instruction requirements; and

(d) Section 53E-3-502(8) which requests the Board help school districts develop and implement guidelines, strategies, and professional development programs for administrators and teachers consistent with Subsections 53E-2-302(7) and 53E-6-103(1)(b), (2)(a) and (b) focused on improving interaction with parents and promoting greater parental involvement in the public schools.

(2) The purpose of this rule is to provide LEAs with the standards for educators and LEAs regarding professional learning, and guidelines and requirements for curriculum, and classroom instruction on educational equity.

**R277-328-2. Definitions.**

(1) "Classroom instruction" means any course material, unit, class, lesson, activity, or presentation that, as the focus of the discussion, provides instruction or information to a student.

(2) "Curriculum" means primary instructional materials that have been approved pursuant to R277-468 and 53E-4-202.

(3) "Educational equity" means acknowledging that all students are capable of learning and distributing resources to provide equal opportunities based upon the needs of each individual student. Equitable resources include funding, programs, policies, initiatives and supports that recognize each student's unique background and school context to guarantee that all students have access to high-quality education.

(4)(a) "Inclusion" means the practice of ensuring students feel a sense of belonging and support; and

(b) to the maximum extent appropriate, for students with disabilities, providing access to general curriculum and engagement in regular education classes with peers without disabilities.

**R277-328-3. Educational Equity Professional Learning.**

(1) An LEA shall provide professional learning to educators concerning educational equity.

(2) The professional learning described in Subsection (1) shall include instruction in:

(a) fostering a learning environment and workplace that are safe and respectful of all students and educators;

(b) aligning teaching practices with the Utah Professional Learning Standards described in Section 53G-11-303, the Board's Resolution No. 2021-01 Denouncing Racism and Embracing Equity in Utah Schools, and the Board's Portrait of a Graduate;

(c) establishing Professional Learning Communities committed to continuous improvement, individual and collective responsibility, and identifying underperforming students in need of supports;

(d) acknowledging differences by looking for the good in everyone, including oneself, and showing due regard for feelings, rights, cultures, and traditions;

(e) collaborating with diverse community members to understand, recognize and appreciate what we all have in common as humans, including acknowledging diverse cultures, languages, traditions, values, needs, and lived experiences;

(f) implementing principles and strategies of inclusion, as they pertain to students and educators with diverse abilities and backgrounds

(g) demonstrating role model responsibilities through the examination of various counterpoints to a topic in an impartial manner;

(h) creating opportunities to recognize personal responsibility in contributing to conditions that preserve the rights of all individuals and to avoid the repetition of past harmful actions by individuals and groups;

(i) defending intellectual honesty including freedom of inquiry, speech, and association; and

(j) cultivating supportive conditions that focus on learning and remove barriers to allow students to have accessible pathways to resources and opportunities.

(3) The professional learning provided by an LEA may not include instruction that promotes or endorses that:

(a) a student or educator's sex, race, religion, sexual orientation, gender identity or membership in any other protected class is inherently superior or inferior to another sex, race, religion, sexual orientation, gender identity or any other protected class;

(b) a student or educator's sex, race, religion, sexual orientation, gender identity or membership in any other protected class determines the content of the student or educator's character including the student or educator's values, morals, or personal ethics;

(c) a student or educator bears responsibility for the past actions of individuals from the same sex, race, religion, sexual orientation, gender identity or any other protected class as the student or educator; and

(d) a student or educator should be discriminated against or receive adverse treatment because of the student or educator's sex, race, religion, sexual orientation, gender identity or membership in any other protected class.

(4) The professional learning provided by an LEA shall be done in accordance with all state and federal laws.

(5) The content of professional learning provided by an LEA shall be made freely available by the LEA to parents with a student in the LEA within a reasonable amount of time before or after the training is offered upon request and include:

(a) a copy of this rule; and

(b) a compliance rubric showing how the professional learning and materials adhere to the requirements of this rule.

(6) The professional learning referred to in Subsection (5) does not include coaching or remediation sessions for a specific educator.

**R277-328-4. Educational Equity Curriculum and Classroom Instruction.**

(1) An LEA may only provide curriculum and classroom instruction that includes concepts as described in Section R277-328-3(3):

(a) in accordance with state and federal law;

(b) in alignment with the Utah Standards approved by the Board; and

(c) that contains age-appropriate content for the developmental age of the student.

(2) If an LEA provides curriculum that includes concepts as described in Section R277-328-3(3), the curriculum shall:

(a) be approved in an open and regular public meeting of the LEA's governing board as described in R277-468;

(b) as applicable, contain content in accordance with the professional learning guidelines and requirements established in Section R277-328-3.

(3) Classroom instruction that includes concepts as described in Section R277-328-3(3), shall be in accordance with the professional learning guidelines and requirements established in Section R277-328-3(2), (3), and (4).

(4) An LEA shall ensure a formal complaint process is in place pursuant to R277-113.

**R277-328-5. Rule Interpretation.**

(1) No part of this rule shall be construed by an LEA or educator to:

(a) prohibit or ban discussions of events, ideas, attitudes, beliefs, or concepts, including those described in this rule, from the general sharing and participation in the marketplace of ideas fostered in a learning environment; and

(b) promote one ideology over another regarding a topic, including those described in this rule.

(2) An LEA may contact the Superintendent for technical assistance regarding the implementation of this rule.

(3) The Superintendent shall establish and deliver a model for professional learning that complies with the requirements of this rule including approval of the model in an open and public meetings of the Board and making the model available on the Utah State Board of Education's website.

(4) The requirement for approval described in Subsection (3) applies only to the professional learning model referenced in this rule and does not apply to other professional learning with embedded components of educational equity offered by the Superintendent so long as the professional learning does not contain concepts described in Subsection R277-328-3(3).

**KEY: educational equity, professional learning, instruction**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-601	Filing ID 53597

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-601. Standards for Utah School Buses and Operations
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The rule is being amended to update the incorporation by reference manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The changes to the manual include clarifying that dual rear wheels and tires must be provided on all school buses and updating certain bus driver qualification criteria.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The updated manual directly impacts only local education agencies (LEAs).

<b>B) Local governments:</b>
This rule change may have some fiscal impact on local governments' revenues or expenditures. Certain changes to the manual regarding bus driver qualifications may impact costs for school district transportation programs but these impacts are not directly measurable. The updates to the manual were thoroughly vetted with the Utah Department of Transportation and school district transportation directors.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The updated manual directly impacts only LEAs.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The updated manual directly impacts only LEAs.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no compliance costs for affected persons. The updated manual directly impacts only LEAs.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
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. In addition, this rule change is not



expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 53E-3-501(1)(d)	Article X, Section 3	Subsection 53E-3-401(4)
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**Incorporations by Reference Information**

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

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Standards for Utah School Buses and Operation
<b>Publisher</b>	Utah State Board of Education
<b>Date Issued</b>	2020
<b>Issue, or version</b>	2

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.**

**R277-601. Standards for Utah School Buses and Operations.**

**R277-601-1. Authority and Purpose.**

(1) This rule is authorized by:  
 (a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and

(c) Subsection 53E-3-501(1)(d), which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs.

(2) The purpose of this rule is to specify standards for state student transportation funds, school buses, and school bus drivers utilized by school districts.

**R277-601-2. Incorporation By Reference.**

(1) This rule incorporates by reference the Standards for Utah School Buses and Operations Manual, June, 2021 Edition~~[December, 2018 Edition]~~, which contains the standards for

NOTICES OF PROPOSED RULES

new and used school buses, operation requirements for school bus operators, and procedures for passenger safety.

(2) A copy of the current Utah School Buses and Operations Manual is located:

(a) at [~~https://www.schools.utah.gov/File/2f934a74-4cbf-4473-ba60-8912a07ae640~~]<https://www.schools.utah.gov/file/aadb2d10-f996-4423-badd-2723d1186176>;

(b) at the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111; and

- (c) on the agency websites of the following state agencies:
  - (i) on the Utah Transportation Commission; and
  - (ii) on the Utah Department of Public Safety.

**R277-601-3. Additional Required Standards.**

In addition to the Standards For Utah School Buses and Operations manual, an LEA shall enforce the following:

(1) a school bus operator's primary responsibility, consistent with training and policy, is always the safety of passengers and the safety of the public.

(2) a school bus operator's proper use of electronic and telecommunications devices including:

(a) except as described in Subsection (2)(d) a prohibition on the use of a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a school bus operator;

(b) the prohibition described in subsection (2)(a) does not apply to the safe and appropriate use of two-way radios or to mounted GPS systems;

(c) an LEA that regularly transports students shall maintain documentation of training for a school bus operator and employees in the safe and appropriate use of two-way radios; and

(d) a school bus operator may use an electronic device once the bus is stopped and safely secured for:

- (i) emergencies;
- (ii) to assist special needs students;
- (iii) for behavior management;
- (iv) for appropriate assistance for field/activity trips;
- (v) for other business-related issues; or
- (vi) personal use if all passengers are safely off the bus and at a safe distance.

(3) Any use of an electronic device inconsistent with this section for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.

(4) Violations of this section may result in personnel action(s) against the school bus operator consistent with an LEA's policies.

(5) A private contractor employed by an LEA for student transportation shall adhere strictly to this section in addition to the policies of the employer.

(6) A school bus operator's end of bus route inspection shall include the following:

(a) at the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall:

- (i) complete the delivery;
- (ii) stop and park the bus; and
- (iii) insure that all students are off the bus;

(b) where possible, be completed at each school site when delivering students to school;

(c) following each from-school route of the day, the bus operator shall complete the same type of inspection described in

subsection (6)(a) at a safe location a short distance from where the final student(s) left the bus; and

(d) if a student is found on the bus, the student shall be immediately returned to the student's assigned bus stop location or to an alternate location, consistent with an LEA's policy and with express permission from the parent.

**KEY: school, buses, school transportation**

**Date of Enactment or Last Substantive Amendment: ~~2021|March 12, 2020~~**

**Notice of Continuation: March 29, 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(d); 53E-3-401(3)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-607	Filing ID 53598

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-607. Absenteeism and Truancy Prevention
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule is being amended due to changes created to the absenteeism statute under in H.B. 81, Mental Health Days for Students, passed in the 2021 General Session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The changes include definitions for "mental health" and "behavioral health." The changes also include an

additional component for local education agencies' (LEA) absenteeism policies to ensure behavioral health-related absences do not get used to circumvent federal laws for special education students.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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 to this rule are due to H.B. 81 (2021).

**B) Local governments:**

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments to this rule are due to H.B. 81 (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 to this rule are due to H.B. 81 (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 to this rule are due to H.B. 81 (2021).

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no independent compliance costs for affected persons. The amendments to this rule are due to H.B. 81 (2021).

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Section 53G-6-206	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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.  
R277-607. Absenteeism and Truancy Prevention.  
R277-607-1. 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; and
  - (c) Section 53G-6-206, which directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or who should be enrolled in an LEA.
- (2) The purpose of this rule is to direct an LEA to create policies for truancy procedures and compulsory education.

**R277-607-2. Definitions.**

- (1) "Absence" means the same as that term is defined in Subsection 53G-6-201(1).

(2) "Behavioral health" means the impact a student's actions can have on a student's physical or mental health and includes conditions in which services provided by social workers, counselors, psychiatrists, neurologists, behavior analyst, psychologists, and physicians would be appropriate.

(3) "Mental health" means the same as that term is defined in Subsection R277-625-2(2).

([2]4) "Notice of truancy" is a citation issued consistent with Section 53G-6-203.

([3]5) "Truant" means the same as that term is defined in Subsection 53G-6-201(7).

([4]6) "Unexcused absence" means a student's absence from school for reasons other than those deemed a valid excuse.

([5]7) "Valid excuse" means the same as that term is defined in Subsection 53G-6-201(9).

**R277-607-3. Absenteeism and Truancy Policy Requirements.**

- (1) An LEA shall:
  - (a) develop an absenteeism and truancy policy that;
    - (i) encourages regular, punctual attendance of students, consistent with Section 53G-8-211 and Title 53G Public Education System -- Local Administration, Chapter 6 Participation in Public Schools, Part 2 Compulsory Education; and
    - (ii) ensures valid excused absences for mental health or behavioral health are not used to circumvent Free Appropriate Public Education (FAPE) requirements or other educational services requirement under federal law including the Individuals with Disabilities Education Act (IDEA);
  - (b) review the LEA's absenteeism and truancy policy regularly;
  - (c) create and operate an attendance review team as described in Subsection (3);
  - (d) review attendance data annually and consider revisions to the absenteeism and truancy policy to encourage student attendance; and
  - (e) make the absenteeism and truancy policy available for review by parents or interested parties.
- (2) An LEA may issue a notice of truancy to a student consistent with the LEA's absenteeism and truancy policy and Section 53G-6-203.
- (3) An LEA's attendance review team shall:
  - (a) consist of:
    - (A) academic instruction;
    - (B) health and wellness;
    - (C) student support services; and
    - (D) attendance data;
  - (ii) where possible, community agencies; and
  - (iii) may include the LEA's multi-disciplinary team;
- (b) review attendance data to inform actions and tiered interventions development at least monthly;
- (c) create a systematic LEA and school level response for the LEA's absenteeism and truancy policy including:
  - (i) practice improvement; and
  - (ii) prevention and intervention strategies; and
  - (d) promote shared accountability and continuous improvement related to an LEA's absenteeism and truancy policy including a school level attendance plan developed at the end of the previous school year.

**R277-607-4. Compulsory Education Procedures.**

(1) An LEA shall develop compulsory education procedures as part of the LEA's absenteeism and truancy policy described in Section R277-607-3.

(2) The compulsory education procedures shall:

(a) provide a process for notice to parents about the absenteeism and truancy policy;

(b) require notice to parents regarding the progress of a student's discipline and consequences for violation of the truancy policy;

(c) provide an appeals process to contest:

(i) a notice of truancy; or

(ii) any disciplinary actions against a student pursuant to the absenteeism and truancy policy or;

(d) establish definitions not provided in law or this rule necessary to implement the absenteeism and truancy policy and compulsory education procedures;

(e) include definitions of:

(i) "approved school activity" under Subsection 53G-6-201(9)(c); and

(ii) "any other excuse" under Subsection 53G-6-201(9)(e);

(f) include criteria and procedures for preapproval of extended absences consistent with Section 53G-6-205; and

(g) establish programs and meaningful incentives which promote regular, punctual student attendance.

(3) An LEA shall publish the appeals process described in Subsection R277-607-4(2)(c) for use by a student or the student's parents.

**KEY: compulsory education, truancy**

**Date of Enactment or Last Substantive Amendment: 2021 [August 12, 2020]**

**Notice of Continuation: June 5, 2020**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-206**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-700	Filing ID 53599

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-700. The Elementary and Secondary School General Core
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The rule is being amended to update outdated references in this rule and update terminology.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The changes include updating definitions, terminology and clarifying middle school and high school requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The amendments provide clarifying and technical changes to better align this rule with current practices and procedures within the field and should not meaningfully impact processes within local education agencies (LEA).
<b>B) Local governments:</b>
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The amendments provide clarifying and technical changes to better align this rule with current practices and procedures within the field and should not meaningfully impact processes within LEAs.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments provide clarifying and technical changes to better align this rule with current practices and procedures within the field and should not meaningfully impact processes within LEAs.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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 fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments provide clarifying and technical changes to better align this rule with current practices and procedures within the field and should not meaningfully impact processes within LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no significant compliance costs for affected persons. The amendments provide clarifying and technical changes to better align this rule with current practices and procedures within the field and should not meaningfully impact processes within LEAs.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Section 53E-4-202	Section 53E-3-501
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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

**10. This rule change MAY become effective on:** 08/09/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency

must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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### R277. Education, Administration.

#### R277-700. The Elementary and Secondary School General Core.

##### R277-700-1. 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-3-501, which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;

(d) Section 53E-4-202, which directs:

(i) the Board to establish Core Standards in consultation with LEA boards and superintendents; and

(ii) LEA boards to adopt local evidence-based curriculum and to design programs to help students master the General Core;

(e) Title 53E, Chapter 4, Part 2, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards; and

(f) Section 53E-4-205, which requires the Board to provide rules related to a basic civics test.

(2) The purpose of this rule is to specify the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements.

##### R277-700-2. Definitions.

For purposes of this rule:

(1)(a) "Applied course" means a public school course or class that applies the concepts of a Core subject.

(b) "Applied course" includes a course offered through Career and Technical Education or through other areas of the curriculum.

(2) "Arts" means the visual arts, music, dance, theatre, and media arts.

(3) "Assessment" means a summative [~~computer adaptive~~] assessment for:

(a) English language arts grades 3 through [4]10;

(b) mathematics grades 3 through [8]10, and Secondary I, II, and III; or

(c) science grades 4 through [8, earth science, biology, physics and chemistry]10.

(4) "Career and Technical Education (CTE)" means an organized educational program in secondary schools (grades 6-12) or courses, which [~~directly or indirectly~~] teach current industry-specific skills and knowledge that prepares students for employment, [or] and for additional postsecondary preparation leading to employment [in an occupation, where entry requirements generally do not require a baccalaureate or advanced degree].

(5) "Core Standard" means a statement of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course.

(6) "Core subject" means a course for which there is a declared set of Core Standards as approved by the Board.

(7) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.

(8) "General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, including the ideas, knowledge, practice and skills that support the Core Standards.

(9) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.

(10) "LEA" or "local education agency" includes the Utah Schools for the Deaf and the Blind.

(11) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.

(12) "Junior High school" means a school that serves grades 7-9 in whatever kind of school the grade levels exist.

(13) "Proficiency in keyboarding" means a student's ability to key by touch.

(14) "Summative adaptive assessment" means an assessment that:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the Core Standards for the respective grade and course; and

(d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

##### R277-700-3. General Core and Core Standards.

(1) The Board establishes minimum course description standards for each course in the required General Core.

(2)(a) The Superintendent shall develop, in cooperation with LEAs, course descriptions for required and elective courses.

(b) The Superintendent shall provide parents and the general public an opportunity to participate in the development process of the course descriptions described in Subsection (2)(a).

(3)(a) The Superintendent shall ensure that the courses described in Subsection (2):

(i) contain mastery criteria for the courses; and

(ii) stress mastery of the course material, Core Standards, and life skills consistent with the General Core.

(b) The Superintendent shall place a greater emphasis on a student's mastery of course material rather than completion of predetermined time allotments for courses.

(4) An LEA board shall administer the General Core and comply with student assessment procedures consistent with state law.

(5) An LEA shall use evidence-based best practices, technology, and other instructional media to increase the relevance and quality of instruction.

##### R277-700-4. Elementary Education Requirements.

(1) The Core Standards and a General Core for elementary school students in grades K-6 are described in this section.

NOTICES OF PROPOSED RULES

(2) The following are the Elementary School Education Core Subject Requirements:

- (a) English Language Arts;
- (b) Mathematics;
- (c) Science;
- (d) Social Studies;
- (e) Arts:
  - (i) Visual Arts;
  - (ii) Music;
  - (iii) Dance; or
  - (iv) Theatre;
- (f) Health Education;
- (g) Physical Education;
- (h) Educational Technology, including keyboarding;~~and~~
- (i) Library Media~~[-]~~ skills, integrated into the core subject areas and

(j) Civics and character education, integrated into the core subject areas.

(3) An LEA board shall provide access to the General Core to all students within the LEA.

(4) An LEA board is responsible for student mastery of the Core Standards.

(5) An LEA shall ~~conduct informal assessments~~ implement formative assessment practices on a regular basis to ensure continual student progress.

(6) An LEA shall assess students for proficiency in keyboarding by grade 5 and report school level results to the Superintendent.

(7) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

- ~~(a) readings;~~
- ~~(b)a~~ language arts;
- ~~(e)b~~ mathematics;
- ~~(d)c~~ science; and
- ~~(e)d~~ effectiveness of written expression in grade~~s five and eight~~ 5.

(8) An LEA shall provide ~~remediation~~ intervention to elementary students who do not achieve mastery of the subjects described in this section.

**R277-700-5. Middle School Education Requirements.**

(1) The Core Standards and a General Core for middle school students are described in this section.

(2) A student in grades 7-8 is required to complete the courses described in Subsection (3) to be properly prepared for instruction in grades 9-12.

(3) The following are the Grades 7-8 General Core Requirements:

- (a) Grade 7 Language Arts;
- (b) Grade 8 Language Arts;
- (c) Grade 7 Mathematics;
- (d) Grade 8 Mathematics;
- (e) Grade 7 Integrated Science;
- (f) Grade 8 Integrated Science;
- (g) United States History;
- (h) Utah History; and
- (i) at least one course in each of the following in grades 7 or 8:

- (A) Health Education;
- (B) College and Career Awareness;
- (C) Digital Literacy;
- (D) the Arts; and

(E) Physical Education.

~~(4) An LEA shall use evidence-based best practices, technology, and other instructional media in middle school curricula to increase the relevance and quality of instruction.~~

(5) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

- ~~(a) reading;~~
- ~~(b)a~~ language arts;
- ~~(e)b~~ mathematics;~~and~~
- ~~(d)c~~ science~~[-]; and~~
- ~~(d)~~ writing in grade 8.

(6) At the discretion of the LEA board, an LEA board may:

- (a) offer additional elective courses;
- (b) require a student to complete additional courses; or
- (c) set minimum credit requirements.

(7) Upon parental or student request, an LEA may, with parental consent, substitute a course requirement described in Subsection (3) with a course, extracurricular activity, or experience that is:

- (a) similar to the course requirement; or
- (b) consistent with the student's plan for college and career readiness.

(8)(a) An LEA shall establish a policy governing the substitution of a course requirement as described in Subsection (7).

(b) An LEA's policy described in Subsection (8)(a) shall include a process for a parent to appeal an LEA's denial of a request for a substitution described in Subsection (7) to the LEA board or the LEA board designee.

**R277-700-6. High School Requirements.**

(1) The General Core and Core Standards for students in grades 9-12 are described in this section.

(2) A student in grades 9-12 is required to earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

~~(3)a~~ Through recording of credits in a student's transcripts for grades 9-12, in accordance with Subsections R277-726-5(~~9~~)~~5~~) and R277-726-5(~~10~~)~~6~~), for purposes of high school graduation, an LEA shall recognize high school credits earned prior to grade 9 through participation in the Statewide Online Education Program~~[- provided that:]~~.

~~(a) the student has declared an intention to graduate early; and~~

~~(b) the high school courses are not used to replace middle school educational requirements.~~

(b) For funding purposes, the LEA should record the participating student's intention to graduate early.

(c) An LEA may not use high school courses to replace middle school educational requirements.

(4) The General Core credit requirements from courses approved by the Board are described in Subsections (4) through (18).

(5) Language Arts (4.0 units of credit from the following):

- (a) Grade 9 level (1.0 unit of credit);
- (b) Grade 10 level (1.0 unit of credit);
- (c) Grade 11 level (1.0 unit of credit); and
- (d) Grade 12 level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;



- (ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;
- (iii) courses apply the fundamental concepts and skills of language arts;
- (iv) courses provide developmentally appropriate content; and
- (v) courses develop skills in reading, writing, listening, speaking, and presentation.

(6) Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation ~~[honors]~~extended courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(7)(a) A student may opt out of Secondary Mathematics III if the student's parent submits a written request to the school.

(b) If a student's parent requests an opt out described in Subsection (6)(a), the student is required to complete a third math credit from the Board-approved mathematics list.

(8) A 7th or 8th grade student may earn credit for a mathematics foundation course before 9th grade, consistent with the student's Plan for College and Career Readiness if:

(a) the student is identified as gifted in mathematics ~~[on at least two different Board-approved assessments]~~in accordance with the procedures outlined in Rule R277-707;

(b) the student is enrolled at a middle school or junior high school and a high school;

(c) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade; or

(d) the student takes the Board competency test in the summer prior to 9th grade and earns high school graduation credit for the course.

(9) A student who successfully completes a mathematics foundation course before 9th grade is required to earn 3.0 units of additional mathematics credit by:

(a) taking the other mathematics foundation courses described in Subsection (5); and

(b) an additional course from the Board-approved mathematics list consistent with:

- (i) the student's Plan for College and Career Readiness; and
- (ii) the following criteria:

(A) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

(B) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

(C) courses apply the fundamental concepts and skills of mathematics;

(D) courses provide developmentally appropriate content; and

(E) courses include the ~~[five process skills of mathematics: problem solving, reasoning, communication, connections, and representation]~~Standards for Mathematical Practice as listed in the Utah secondary mathematics core.

(10) A student who successfully completes a Calculus course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(11) Science (3.0 units of credit):

(a) shall be met minimally through successful completion of 2.0 units of credit from two of the following five science foundation areas:

- (i) Earth Science (1.0 units of credit);
- (A) Earth Science;
- (B) Advanced Placement Environmental Science; or

- (C) International Baccalaureate Environmental Systems;
- (ii) Biological Science (1.0 units of credit);
- (A) Biology;

~~[(B) Human Biology;]~~

~~[(C)B] Biology: Agricultural Science and Technology;~~

~~[(D)C] Advanced Placement Biology;~~

~~[(E)D] International Baccalaureate Biology; or~~

~~[(F)E] Biology with Lab Concurrent Enrollment;~~

(iii) Chemistry (1.0 units of credit);

(A) Chemistry;

(B) Advanced Placement Chemistry;

(C) International Baccalaureate Chemistry; or

(D) Chemistry with Lab Concurrent Enrollment;

(iv) Physics (1.0 units of credit);

(A) Physics;

~~[(B) Physics with Technology;]~~

~~[(C)B] Advanced Placement Physics (1, 2, C: Electricity and Magnetism, or C: Mechanics);~~

~~[(D)C] International Baccalaureate Physics; or~~

~~[(E)D] Physics with Lab Concurrent Enrollment; or~~

(v) Computer Science (1.0 units of credit):

(A) Advanced Placement Computer Science;

(B) Computer Science Principles; or

(C) Computer Programming ~~[H]2~~; and

(b) one additional unit of credit from:

(i) the foundation courses described in Subsection(10)(a); or

(ii) the applied or advanced science list:

(A) determined by the LEA board; and

(B) approved by the Board using the following criteria and

consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science;

(iii) courses apply the fundamental concepts and skills of science;

(iv) courses provide developmentally appropriate content;

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(12) Social Studies (3.0 units of credit) shall be met minimally through successful completion of:

(a) 2.5 units of credit from the following courses:

(i) World Geography ~~[for Life]~~(0.5 units of credit);

(ii) World ~~[Civilizations]~~History (0.5 units of credit);

(iii) U.S. History (1.0 units of credit); and

(iv) U.S. Government and Citizenship (0.5 units of credit);

(b) Social Studies (0.5 units of credit per LEA discretion);

and

(c) a basic civics test or alternate assessment described in R277-700-8.

(13) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance;~~[-or]~~

(d) Theatre~~[-]; or~~

(e) Media Arts.

(14) Health Education (0.5 units of credit).

~~[(14)15](a) Physical~~ ~~[and Health]~~ Education ~~[(2.0)1.5 units of credit from~~ ~~[any]each~~ of the following):

NOTICES OF PROPOSED RULES

~~(a) Health (0.5 units of credit);~~  
(b)i) Participation Skills (0.5 units of credit);  
~~(c)ii) Fitness for Life (0.5 units of credit); and~~  
(d)iii) Individualized Lifetime Activities (0.5 units of credit);~~or~~

(e)b) Notwithstanding Subsection (15)(a), a student may earn 0.5 units of credit per sport for team sport/athletic participation [maximum of 1.0 units of credit with school] up to a maximum of 1.0 units of credit with LEA approval) to replace participation skills and individualized lifetime activities requirements.

~~(15)16) Career and Technical Education (1.0 units of credit from any of the following):~~

- ~~(a) Agriculture, Food and Natural Resources;~~
- ~~(b) Business]Architecture and Construction;~~
- ~~(c) Family and Consumer Sciences]Arts, Audio/Visual Technology and Communications;~~

~~(d) Health Science and Technology]Business, Finance and Marketing;~~

- ~~(e) Computer Science and Information Technology;~~
- ~~(f) Marketing]Education and Training;~~
- ~~(g) Engineering and Technology[and Engineering Education];~~or~~~~

~~(h) Trade and Technical Education.]Health Science;~~

- ~~(i) Hospitality and Tourism;~~
- ~~(j) Human Services;~~
- ~~(k) Law, Public Safety, Corrections and Security;~~
- ~~(l) Manufacturing; or~~
- ~~(m) Transportation, Distribution, and Logistics.~~

~~(16)17) Digital Studies (0.5 units of credit).~~  
~~(17)18) Library Media Skills (integrated into the subject~~

~~areas).~~  
~~(18)19) General Financial Literacy (0.5 units of credit).~~  
~~(19)20) Electives (5.5 units of credit).~~

~~(20)21) An LEA shall use Board-approved summative [adaptive]-assessments to assess student mastery of the following subjects:~~

- ~~(a) reading;~~
- ~~(b)a) language arts through grade 11;~~
- ~~(c)b) mathematics as defined in Subsection ([5]6); and~~
- ~~(d)c) science as defined in Subsection ([10]11).~~

~~(21)22) An LEA board may require a student to earn credits for graduation that exceed the minimum Board requirements described in this rule.~~

~~(22)23) An LEA board may establish and offer additional elective course offerings at the discretion of the LEA board.~~

~~(23)24(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:~~

- ~~(i) the student has a disability; and~~
- ~~(ii) the modifications to the student's graduation requirements are made through the student's individual IEP.~~

~~(b) An LEA shall document the nature and extent of a modification, substitution, or exemption made to a student's graduation requirements described in Subsection (22)(a) in the student's IEP.~~

~~(24)25) The Superintendent shall provide a list of approved courses meeting the requirements of this rule.~~

~~(25)26) An LEA may modify graduation requirements for an individual student to achieve an appropriate route to student success if the modification:~~

- ~~(a) is consistent with:~~
  - ~~(i) the student's IEP; or~~
  - ~~(ii) SEOP/Plan for College and Career Readiness;~~
- ~~(b) is maintained in the student's file;~~

- ~~(c) includes the parent's signature; and~~
- ~~(d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.~~

**R277-700-7. Student Mastery and Assessment of Core Standards.**

(1) An LEA shall ensure students master the Core Standards at all levels.

(2) An LEA shall provide ~~remediation]~~intervention for secondary students who do not achieve mastery in accordance with Section 53G-9-803.

(3) An LEA shall provide remedial assistance to students who are found to be deficient in basic skills through a statewide assessment in accordance with Subsection 53E-5-206(1).

(4) If a parent objects to a portion of a course or to a course in its entirety under Section 53G-10-205, the parent shall be responsible for the student's mastery of Core Standards to the satisfaction of the school prior to the student's promotion to the next course or grade level.

(5)(a) A student with a disability served by a special education program is required to demonstrate mastery of the Core Standards.

(b) If a student's disability precludes the student from successfully mastering the Core Standards, the student's IEP team, on a case-by-case basis, may provide the student an accommodation for, or modify the mastery demonstration to accommodate, the student's disability.

(6) A student may demonstrate competency to satisfy course requirements consistent with R277-705-3.

(7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-404.

**R277-700-8. Civics Education Initiative.**

(1) For purposes of this section:

- (a) "Student" means:
  - (i) a public school student who graduates on or after January 1, 2016; or
  - (ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.
- (b) "Basic civics test" means the same as that term is defined in Subsection 53E-4-205(1)(b).

(2) Except as provided in Subsection (3), an LEA shall:

- (a) administer a basic civics test in accordance with the requirements of Section 53E-4-205; and
- (b) require a student to pass the basic civics test as a condition of receiving:

- (i) a high school diploma; or
- (ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

- (a)(i) the student has a disability; and
- (ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

- (a) in the same manner as an exam given to an unnaturalized citizen; and
- (b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basics civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

**R277-700-9. College and Career Readiness Mathematics Competency.**

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

- (a) is pursuing a college degree after graduation; and
- (b) has not met one of criteria described in Subsection (2)(a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

- (a) receive one of the following:
  - (i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;
  - (ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;
  - (iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;
  - (iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;
  - (v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;
  - (vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or
  - (vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or
- (b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

- (a) the student has a disability; and
- (b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) An LEA shall report annually to the LEA's board the number of students within the LEA who:

- (i) meet the criteria described in Subsection (2)(a);
- (ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

**KEY: graduation requirements, standards**

**Date of Enactment or Last Substantive Amendment: ~~2021~~ ~~May 23, 2019~~**

**Notice of Continuation: August 14, 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(b); 53E-4-202; 53E-3[3]-401(4)**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-920</b>	<b>Filing ID</b>	<b>53600</b>
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**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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:**

R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

The rule is being amended to allow a school eligible to be considered for exit at the conclusion of the applicable year to elect to remain in the turnaround program an additional year; and to allow the Superintendent to provide funding to a school that remains in the turnaround program beyond the school's identified exit year.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

The changes include new language stating that the Board of Education Superintendent may provide funding to a school that remains in the turnaround program beyond the school's identified exit year and provides updated options

for schools eligible to exit school turnaround in a year with statewide assessment system irregularities.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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. There would be no independent impact to either the Utah State Board of Education (USBE) or local education agencies (LEAs) because staying an extra year within the program is dependent on LEA request and USBE approval.

**B) Local governments:**

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. There would be no independent impact to either USBE or LEAs because staying an extra year within the program is dependent on LEA request and USBE approval.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. These amendments pertain only to USBE and LEAs with schools within the school turnaround program.

**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 impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. These amendments pertain only to USBE and LEAs with schools within the school turnaround program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no independent compliance costs for affected persons. There would be no independent impacts to either USBE or LEAs because staying an extra year within the program is dependent on LEA request and USBE approval.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Article X, Section 3	Subsection 53E-3-401(4)	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/02/2021

<b>10. This rule change MAY become effective on:</b>	08/09/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.  
R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act.**

**R277-920-1. Authority and Purpose.**  
 (1) This rule is authorized by:  
 (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;  
 (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and  
 (c) Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:  
 (i) an appeal process for the denial of a school turnaround plan;

(ii) provisions regarding funding distributed to a low performing school;  
 (iii) criteria for granting an extension to a low performing school;  
 (iv) criteria for exiting a school that has demonstrated sufficient improvement;  
 (v) criteria for approving a teacher recruitment and retention plan;  
 (vi) implications for a low performing school; and  
 (vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.  
 (2) The purpose of this rule is to:  
 (a) enact provisions governing school improvement efforts; and  
 (b) implement and administer the School Turnaround and Leadership Development Act.

**R277-920-2. Definitions.**

(1) "Appeal committee" means the committee established by Section R277-920-5.  
 (2) "Baseline performance" means the percentage of possible points earned by a school through the school accountability system in the year the school was identified as a low performing school.  
 (3) "Committee" means a school turnaround committee established in accordance with Subsections 53E-5-303(1) or 53E-5-304(4).  
 (4) "Eligible school" means a low performing school that:  
 (a) was designated as a low performing school based on 2014-2015 school year performance; and  
 (b)(i) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; or  
 (ii)(A) has been granted an extension under Subsection 53E-5-306(3) and this Rule R277-920; and  
 (B) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.  
 (5) "Low performing school" means a school that:  
 (a) is for two consecutive school years in the lowest performing:  
 (i) 3% of the high schools statewide according to the percentage of possible points earned under the school accountability system; or  
 (ii) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school accountability system; and  
 (b) participates in the school turnaround and leadership development program described in Title 53E, Chapter 5, Part 3.  
 (6) "High performing charter school" means the same as that term is defined in Section 53E-5-306.  
 (7) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).  
 (8) "Schools in critical needs status" means a school that has been identified under Subsection R277-920-3(1).  
 (9) "School leader" means the same as that term is defined in Section 53E-5-309.

(10) "School turnaround program" or "[school]turnaround program" means the school turnaround and leadership development program described in Title 53G, Chapter 5, Part 3.

(11) "State review panel" means a state review panel appointed by the Superintendent that includes at least three members who each have demonstrated expertise in two or more of the following fields:

- (a) leadership at the school district or school level;
- (b) standards-based elementary or secondary curriculum instruction and assessment;
- (c) instructional data management and analysis;
- (d) educational program evaluation;
- (e) educational program management;
- (f) teacher leadership;
- (g) change management;
- (h) organizational management; or
- (i) school budgeting and finance.

(12) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

**R277-920-3. Superintendent's Identification of Schools for Critical Needs Status -- Readiness Review.**

(1) Subject to Subsection (2), on or before September 30, the Superintendent shall identify schools for critical needs status if the school is a:

- (a) low performing school;
- (b) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for three school years on average;
- (c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or
- (d) Title I school that:
  - (i) has not been identified under Subsection (1)(a), (b), or (c); and
  - (ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(2) The Superintendent shall make the identification under:

- (a) Subsection (1)(b) beginning with the 2018-2019 school accountability results and every two years thereafter;
- (b) Subsection (1)(c) beginning with the 2022-2023 school accountability results and every three years thereafter; and
- (c) Subsection (1)(d) beginning with the 2021-2022 school accountability results and every three years thereafter.

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with the provisions of Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act.

(b) Schools that are identified under Subsections (1)(b), (1)(c), and (1)(d) are exempt from the requirement to contract with an independent school turnaround expert described in Section 53E-5-305.

**R277-920-4. Superintendent's Identification of Schools for Targeted Needs Status.**

(1) As used in this section, "student groups" means a group of 10 or more students:

- (a) who are economically disadvantaged;
- (b) with disabilities;
- (c) who are English learners;
- (d) who are African American;
- (e) who are American Indian;

- (f) who are Asian;
- (g) who are Hispanic;
- (h) who are Multiple races;
- (i) who are Pacific Islander; or
- (j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of possible points in the state's accountability system that is equal to or below the percentage of possible points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-3.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.

**R277-920-5. Identification of New Schools due to Statewide Assessment System Irregularities During the 2020 COVID-19 Pandemic.**

The Superintendent may not identify a new school for critical needs status based on school accountability results from the 2019-20 school year due to the waiver to administer assessments described in Section 53E-4-315.

**R277-920-6. School Turnaround Plan Submission and Approval Process.**

(1) In addition to the requirements described in Subsection 53E-5-303(5), a plan shall include at least the following:

(a) if the school in critical needs status is a district school, a request to the local school board and district superintendent for:

- (i) additional resources;
- (ii) personnel; or
- (iii) exemptions from district policy that may be contributing to the low performance of the district school; and
- (b) a plan for management of school personnel, including:
  - (i) recruitment of an educator or school leader; and
  - (ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.

(5) A local education board shall submit a plan in accordance with Subsection 53E-5-303(7) or Subsection 53E-5-304(9) to the Board.

(6) In accordance with Subsection 53E-5-305(3), the Board may review and approve or deny a plan in whole or in part, if the part of the plan the Board denies is severable from the part of the plan the Board approves.

**R277-920-7. Appeal Process for Denial of a School Turnaround Plan.**

(1) As used in this section "plan" means a school turnaround plan described in Subsection 53E-5-303(5).

(2) A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

(3) An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53E-5-305(6)(b).

(4)(a) A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

(i) by electronically filing the request:

(A) with the chair of the local education board; and

(B) on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within 10 calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

(5) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within 5 calendar days of the denial.

(6)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(7) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

**R277-920-8. School Turnaround Program Funding.**

(1) The Superintendent shall annually designate an amount of funds available for distribution to low performing schools under this section, taking into consideration:

(a) variability in the number of schools that are identified on an annual basis;

(b) encumbered funds; and

(c) other program obligations.

(2) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (3) and (4) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.

(3) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least \$240,000 per low performing school to each local education board of a low performing school.

(4) Subject to availability of funds, in addition to the amount distributed under Subsection (3), the Superintendent shall distribute an amount equal to \$30,000 for each of the following criteria that a school meets:

(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;

(b) the school is located within San Juan County; or

(c) the school:

(i)(A) has over 75 full time equivalent educators; and

(B) includes grade 12; or

(ii)(A) has over 37 full time equivalent educators; and

(B) does not include grade 12.

(5)(a) The local education board shall use the funding distributed under Subsections (3) and (4) to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.

(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.

(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.

(7) The Superintendent may provide funding to a school that remains in the turnaround program beyond the school's identified exit year.

**R277-920-9. Teacher Recruitment and Retention.**

(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-8.

(2) In accordance with Section 53E-5-308, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).

(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:

(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;

(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53E-5-302; or

(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:

- (A) a clear definition of the problem to be solved;
- (B) hypotheses for the causes of the problem;
- (C) strategies to address the root causes of the problem;
- (D) current data on teacher retention rates; and
- (E) current recruitment and retention strategies;

(c) includes the amount of matching funds the local education board is requesting from the state;

(d) includes assurances that the local education board will allocate matching funds; and

(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.

(4) The Superintendent shall:

(a) approve a plan that meets the criteria described in Subsection (3); and

(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:

(i) \$1000 per teacher for schools identified based on 2014-2015 school accountability results; or

(ii) \$1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.

**R277-920-10. School Leadership Development Program.**

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) First priority shall be given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a low performing school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after:

(i) the school leader completes the School Leadership Development Program; and

(ii) the school leader's LEA verifies that the school leader entered into a written agreement as described in Subsection 53E-5-309(4).

(b) The Superintendent shall distribute \$400 per session to a school leader who completes at least 75% of the School Leadership Development Program sessions.

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

**R277-920-11. Exit Criteria for a Low Performing School – Extensions – More Rigorous Interventions.**

(1)(a) Except as provided in Subsection (1)(b), to exit the school turnaround program, a low performing school shall demonstrate, in the third or fourth year after which the school was identified as a low performing school, that the school:

(i) meets individualized exit criteria that is calculated by reducing the gap in performance between the school's baseline performance and the threshold score for a 'B' letter grade, as described in R277-497-2, by one-third; and

(ii) exceeds the lowest 5% of all schools in the ranking of schools from the year the school was identified.

(b) A low performing school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53E, Chapter 5, Part 2, School Accountability System that was in place at the time the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)(a) in the fourth year after which the school was identified as a low performing school, the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i)(A) reduced the gap in performance between the school's baseline performance and the threshold for a 'B' letter grade, as described in R277-497-2, by at least one-fourth; and

(B) exceeds at least the lowest 3% of all schools in the ranking of schools from the year the school was scheduled to exit; or

(ii) has met only one of the exit criteria described in Subsection (1)(a); and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:

(i) in each school that qualifies for an extension under Subsection (3); and

(ii) that is individualized to each teacher.

(b) The Superintendent may require a local education board or school to:

(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or

(ii) revise the school turnaround plan.

(5) If a school identified as a low performing school does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection (7);

(b) if the school is a district school, the local school board, with input from the community as described in Subsection (8); and



(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (8).

(6) The groups described in Subsection (5) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school; or

(d) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located;

or

(iii) close the school; or

(e) take other action.

(7)(a) The Superintendent shall appoint members of a state review panel.

(b) The state review panel shall critically evaluate at least:

(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;

(ii) whether the school leadership is adequate to implement change to improve school performance;

(iii) whether the school has sufficient authority to implement change;

(iv) whether the plan is being implemented with fidelity;

(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53E-5-303;

(vi) the likelihood that performance can be improved within the current management structure and staffing; and

(vii) the necessity that the school remain in operation to serve students.

(8) A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:

(a) parents of students currently attending the school;

(b) teachers, principals, and other school leaders at the school;

(c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and

(d) other community members and community partners.

### **R277-920-12. Exit Criteria for Schools in a year with Statewide Assessment System Irregularities.**

(1) For a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments:

(a) the Superintendent shall appoint a state review panel; and

(b) the state exit review panel shall review the data of a school eligible to be considered for exit at the conclusion of the applicable year and make a recommendation to the Board on whether the school demonstrated adequate progress to exit the turnaround program.

(2) A state exit review panel described in Subsection (1) shall review the following questions to inform the state exit review panel's recommendation:

(a)(i) for a school identified based on school accountability results from the 2014-15 or 2015-16 school year, whether the school achieved above the lowest 3% threshold based on the school accountability data and measures from the 2018-19 school year; or

(ii) for a school identified based on school accountability results from the 2017-18 school year or later, whether the school achieved above the lowest 3% threshold based on the school accountability data and measures from a combination of two consecutive years;

(b) whether the school provides evidence of substantial progress and growth in addition to the data described in Subsection (2)(a); and

(c) whether the school has qualitative or quantitative data from the implementation of the school's turnaround plan that also demonstrate substantial improvement.

(3) For a school whose data are impacted by statewide assessment system irregularities or a suspension of the administration of statewide assessments during one or more of the school's designated years in the turnaround program:

(a) the Superintendent shall appoint a state review panel;

(b) the state exit review panel shall review the data of the school whose data are impacted by the statewide assessment system irregularities or suspension of statewide assessment; and

(c) the state exit review panel shall make a recommendation to the Board whether the school demonstrated substantial improvement.

(4) A state exit review panel described in Subsection (3) shall review qualitative and quantitative data from the Implementation of the school's turnaround plan.

(5) The qualitative and quantitative data described in Subsection (4) may include:

(a) local student performance data, including formative assessment data;

(b) for a school that is a high school:

(i) credit earned;

(ii) graduation rate; and

(iii) other types of successful completion, such as earning a GED;

(c) increased attendance;

(d) student engagement or school climate;

(e) parent engagement;

(f) criteria presented by the school being reviewed;

(g) whether the charter school is meeting all minimum standards described in Section

53G-5-303 in the school's charter agreement with the authorizer, including:

(i) minimum financial standards for operating the charter

school;

NOTICES OF PROPOSED RULES

- (ii) minimum standards for student achievement;
- (iii) the mission statement and purpose of the charter school;
- (iv) the grade levels served;
- (v) the maximum number of students; and
- (vi) the charter school governing board and structure; and
- (h) additional criteria established by the Superintendent.

(6)(a) Notwithstanding other provisions in this Section R277-920-12, for a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments, a school eligible to be considered for exit at the conclusion of the applicable year may elect to remain in the turnaround program an additional year.

(b) For a school that elects to remain in the program an additional year as described in Subsection (6)(a), the Superintendent may provide a different standard of review of the school's data by the state review panel.

(7) For a school that elects to remain in the program an additional year as described in Subsection (6):

(a) the Superintendent may provide a different standard of review of the school's data by the state exit review panel; and

(b) in addition to the information described in Subsection (5), the school shall provide a request for resources to the Superintendent, including the proposed uses of the resources, for the school's additional year in the turnaround program.

**R277-920-13. School Recognition and Reward Program.**

(1) The Superintendent shall distribute school recognition and reward program money to an LEA with an eligible school within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.

(2) The Superintendent shall notify the LEA and principal of an eligible school within 15 days of the Board's official release of school grades:

- (a) that the eligible school is eligible for an award of money; and
- (b) of the amount of the award that the eligible school will receive.

(3) The LEA, in consultation with the principal of the eligible school shall distribute the money received under Subsection (1):

- (a) to each educator assigned to the school for all of the years the school was identified as a low performing school; and
- (b) in a pro-rated manner to each educator assigned to the school for less time than the school was identified as a low performing school.

**KEY: principals, school improvements, school leaders**  
**Date of Enactment or Last Substantive Amendment: ~~January 8,~~ 2021**  
**Notice of Continuation: November 9, 2020**  
**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401(4); Title 53E, Chapter 5, Part 3**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-925	Filing ID 53601

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-925. Effective Teachers in High Poverty Schools Incentive Program
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The rule is being amended to update the data used for identifying high poverty schools to capture more accurate data.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The rule changes update the date used for identifying high poverty schools.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The amendments will not impact Utah State Board of Education (USBE) processes or procedures.
<b>B) Local governments:</b>
This rule change may have some small fiscal impact on local governments' revenues or expenditures. Utilizing end of year data to identify high-poverty schools more accurately could change slightly which schools qualify for the program but these impacts are not directly measurable.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments only impact local education agencies (LEAs) within the state.

**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. These amendments pertain only to USBE and LEAs with schools within the school turnaround program.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. The amendments only impact LEAs within the state.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

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

this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/14/2021
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**R277. Education, Administration.**

**R277-925. Effective Teachers in High Poverty Schools Incentive Program.**

**R277-925-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Subsection 53F-2-513(2)(b), which requires the Board to make rules for the administration of the Effective Teachers in High Poverty Schools Incentive Program.
- (2) The purpose of this rule is to provide standards and procedures for the administration of the Effective Teachers in High Poverty Schools Incentive Program.

**R277-925-2. Definitions.**

- (1) "Benchmark assessment" means the assessment described in Section 53E-4-307.
- (2) "Eligible teacher" means the same as that term is defined in Section 53F-2-513.
- (3) "High poverty school" means the same as that term is defined in Section 53F-2-513.
- (4) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (5) "Median growth percentile" or "MGP" means the same as that term is defined in Section 53F-2-513.
- (6) "Program" means the Effective Teachers in High Poverty Schools Incentive Program.
- (7) "Standards assessment" means the assessment described in Section 53E-4-303.
- (8) "State-assessed subject" means English language arts, mathematics, or science.

**R277-925-3. Administration of the Program.**

- (1) On or before December 1, the Superintendent shall:
  - (a) identify high poverty schools and eligible teachers in accordance with Subsection (2);
  - (b) distribute a list of eligible teachers to LEAs; and
  - (c) inform LEAs of program requirements and the timeline for applying on behalf of an eligible teacher.

- (2) The Superintendent shall identify:
  - (a) high poverty schools based on the proportion of students who:
    - (i) qualify for free or reduced lunch in the current school year, based on:
      - (A) the ~~[October 1]~~most recent end of school year enrollment headcounts for existing schools; ~~[and]~~or
      - (B) the October 1 enrollment headcounts for new schools; and
    - (ii) are classified as children affected by intergenerational poverty, as determined by the Utah Department of Workforce Services, for the most recent year data is available; and
  - (b) eligible teachers by determining:
    - (i) whether the teacher's MGP was greater than or equal to 70:
      - (A) for at least one state-assessed subject taught by the teacher;
      - (B) as measured by student performance on a standards assessment;
      - (C) two years before the current school year; and
      - (D) excluding subjects or teachers with less than 10 tested students; or
      - (ii) for a teacher in grades 1-3, whether at least 85% of the teacher's students assess as typical or better on an end of year benchmark assessment.
- (3) To receive matching funds for the program, on or before January 15, an LEA shall:
  - (a) apply on behalf of an eligible teacher; and
  - (b) provide assurances that the LEA will pay half of the:
    - (i) teacher salary bonus; and
    - (ii) employer-paid benefits described in Section 53F-2-513.
- (4)(a) Subject to legislative appropriations, on or before June 1, the Superintendent shall:
  - (i) ensure that a teacher who was determined eligible under Subsection (1) and (2) taught at a high poverty school for the full school year; and
  - (ii) distribute to an LEA that meets the criteria described in Subsection (3) half of the:
    - (A) teacher salary bonus; and
    - (B) employer-paid benefits described in Section 53F-2-513.
- (b) Consistent with Section 53F-2-513, the Superintendent may distribute the funds on a pro rata basis if the number of eligible applicants exceeds the amount of available funds.
- (5)(a) An LEA or an eligible teacher may appeal eligibility to the Superintendent on the basis that the teacher:
  - (i) is teaching at a high poverty school;
  - (ii) is an eligible teacher; or
  - (iii) has less than 10 tested students, but can demonstrate extenuating circumstances that merit an exception.
- (b) An LEA or eligible teacher shall provide documentation to the Superintendent to assist the Superintendent in deciding on the appeal.

**KEY: teachers, poverty schools, incentives**  
**Date of Enactment or Last Substantive Amendment:**  
**2021**~~[November 9, 2020]~~  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**  
**53E-3-401(4); 53F-2-513**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R307-840	Filing ID 53562

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The Environmental Protection Agency (EPA) amended the definition of "clearance levels" and "dust-lead hazard". In order to maintain EPA-authorization, our program must implement these rule changes within two years from the date they were enacted. The definition of "elevated blood lead level" was also changed to accurately reflect the definition used by the Center of Disease Control.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The new definition of clearance levels specifies that values below the clearance levels must be met to achieve clearance. Dust-lead hazard standards have been reduced from 40 µg/ft <sup>2</sup> and 250 µg/ft <sup>2</sup> to 10 µg/ft <sup>2</sup> and 100 µg/ft <sup>2</sup> on floors and windowsills, respectively. To be considered an elevated blood lead level, the concentration of lead in whole blood has changed from ≥20 ug/dl to ≥5 ug/dl.
A public hearing is set for Tuesday, August 3, 2021. Further details may be found below. The hearing will be cancelled should no request for one be made by Monday,

August 2, at 10:00AM MDT. The final status of the public hearing will be posted on Monday, August 2, 2021, after 10:00AM MDT. The status of the public hearing may be checked at the following website location under the corresponding rule.

<https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget because the program administered is not changing.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because this rulemaking is not applicable to them.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
Small businesses will have to be more thorough with post-abatement cleaning in order to meet new dust-lead clearance levels. This could lead to slightly longer cleanup times and the increase of cleaning product use.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
Non-small businesses will have to be more thorough with post-abatement cleaning in order to meet new dust-lead clearance levels. This could lead to slightly longer cleanup times and the increase of cleaning product use.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There are no anticipated costs or savings for persons other than small businesses, non-small businesses, state, or local governments.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no anticipated compliance costs for affected persons outside of the previously stated minor impacts on small and non-small businesses.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>

This rulemaking is not anticipated to have measurable fiscal impact on businesses. The only impact to businesses may be in marginally longer clean-up times that may require the use of more cleaning products. Kimberly D. Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved of this impact analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 19-2-104(1)(i)		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/03/2021
<b>B) A public hearing (optional) will be held:</b>	
<b>On:</b>	<b>At:</b>
08/03/2021	10:00 AM MDT
	meet.google.com/phs-bges-gjs or by phone: +1 617-675-4444 PIN: 783 369 570 5377#

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

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	05/18/2021
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**R307. Environmental Quality, Air Quality.**

**R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions.**

**R307-840-1. Purpose and Applicability.**

(1) Rule R307-840, R307-841, and R307-842 establish procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and renovations, and work practice standards for performing such activities. These rules also require that, except as outlined in R307-840-1(2), all lead-based paint activities and renovations, as defined in these rules, must be performed by certified individuals and firms.

(2) R307-840, R307-841, and R307-842 apply to all individuals and firms who are engaged in lead-based paint activities and renovations as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) R307-840, R307-841, and R307-842 identify lead-based paint hazards. The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(4) R307-840, R307-841, and R307-842 do not require the owner of the property or properties subject to these rules to evaluate the property or properties for the presence of lead-based paint hazards or

take any action to control these conditions if one or more of them is identified.

(5) While R307-840, R307-841, and R307-842 establish specific requirements for performing lead-based paint activities and renovations should they be undertaken, these rules do not require that the owner or occupant undertake any particular lead-based paint activity or renovation.

(6) Individuals or firms wishing to deviate from the certification, notification, work practice, or other requirements of R307-840, R307-841, and/or R307-842 may do so only after requesting and obtaining written approval from the director.

#### **R307-840-2. Definitions.**

The following definitions apply to R307-840, R307-841, and R307-842, in addition to the definitions found in R307-101-2.

"Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(i) Shall result in the permanent elimination of lead-based paint hazards; or

(ii) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(b) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with R307-842-2, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State of Utah or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited Training Program" means a training program that has been accredited by the director pursuant to R307-842-1 to provide training for individuals engaged in lead-based paint activities.

"Adequate Quality Control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic Mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business Day" means Monday through Friday with the exception of federal and State of Utah holidays.

"Certificate of Mailing" means Certificate of Mailing as defined by the United States Postal Service.

"Certified Abatement Worker" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to perform abatements.

"Certified Dust Sampling Technician" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to collect dust samples.

"Certified Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization that performs lead-based paint activities, renovations, or dust sampling to which the director has issued a certificate of approval pursuant to R307-842-2(5).

"Certified Inspector" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Project Designer" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified Renovator" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-841-8(1) and R307-842-2 to conduct renovations.

"Certified Risk Assessor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Supervisor" means an individual who has been trained by an accredited training program and certified by the director pursuant to R307-842-2 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

"Chewable Surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that can not be dented by the bite of a young child are not considered chewable.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility

## NOTICES OF PROPOSED RULES

encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Clearance Levels" are values that indicate the ~~maximum~~ amount of lead ~~permitted~~ in dust on a surface following completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved.

"Common Area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Common Area Group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairways, and laundry rooms.

"Component or Building Component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners, and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course Agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course Test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course Test Blue Print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Deteriorated Paint" means any interior or exterior paint or other coating that is flaking, peeling, chipping, chalking, or cracking, or any other paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this rule for which individuals may receive training from accredited programs and become certified by the director. Disciplines include Abatement Worker, Dust Sampling Technician, Inspector, Project Designer, Renovator, Risk Assessor, and Supervisor.

"Distinct Painting History" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented Methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within 3 feet surrounding the perimeter of the building.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding ~~[40]~~10 ug/ft<sup>2</sup> on floors or ~~[250]~~100 ug/ft<sup>2</sup> on interior window sills based on wipe samples.

"Elevated Blood Lead Level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of ~~[20]~~≥5 micrograms of lead per deciliter of whole blood (ug/dl) for a single ~~venous test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart~~ venous blood test or two capillary blood tests drawn within 12 weeks of each other.

"Emergency Renovation Operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"Friction Surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

"Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-On Skills Assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in R307-842-1(4), as well as any other skill taught in a training course.

"Hazardous Waste" means any waste as defined in 40 CFR 261.3.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Housing for the Elderly" means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.



"HUD" means the United States Department of Housing and Urban Development.

"Impact Surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim Certification" means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the director pursuant to R307-842-2. Interim certification expires 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior Window Sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-Based Paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

"Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

"Lead-Based Paint Activities Courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-Based Paint Hazard" means, for the purposes of lead-based paint activities, any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the EPA pursuant to TSCA Section 403, and for the purposes of renovation, means hazardous lead-based paint, dust-lead hazard, or soil-lead hazard as identified in R307-840-2.

"Lead-Hazard Screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in R307-842-3(3).

"Living Area" means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Local Government" means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under state law.

"Mid-Yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Minor Repair and Maintenance Activities" are activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface

per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by R307-841-5(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Multi-Family Dwelling" means a structure that contains more than one separate residential dwelling unit which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multi-Family Housing" means a housing property consisting of more than four dwelling units.

"Nonprofit" means an entity which has demonstrated to any branch of the federal government or to a state, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

"Paint In Poor Condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors), or more than 10% of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in the definition of "Dust-lead hazard".

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of state or local sources of information).

"Permanently Covered Soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

## NOTICES OF PROPOSED RULES

"Person" means any natural or judicial person including any individual, corporation, partnership, or association, any Indian tribe, state, or political subdivision thereof, any interstate body, and any department, agency, or instrumentality of the federal government.

"Play Area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

"Principal Instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized Laboratory" means an environmental laboratory recognized by EPA pursuant to TSCA Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Renovation" means the modification of an existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by R307-840-2. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)), the removal of building components (e.g., walls, ceilings, plumbing, windows), weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this rule. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations.

"Residential Building" means a building containing one or more residential dwellings.

"Residential Dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk Assessment" means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not

considered built-in walls. A screened in porch that is used as a living area is a room.

"Soil Sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ug/g) in a play area or average 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

"Start Date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start Date Provided to the director" means the start date included in the original notification or the most recent start date provided to the director in an updated notification.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601.

"Training Manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training Provider" means any organization or entity accredited under R307-842-1 to offer lead-based paint activities, renovator, or dust sampling technician courses.

"Vertical containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

"Visual Inspection for Clearance Testing" means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

"Visual Inspection for Risk Assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"Weighted Arithmetic Mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number

of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 ug/ft<sup>2</sup>, a composite sample (3 subsamples) containing 100 ug/ft<sup>2</sup>, and a composite sample (4 subsamples) containing 110 ug/ft<sup>2</sup> is 100 ug/ft<sup>2</sup>. This result is based on the equation  $(60+(3*100)+(4*110))/(1+3+4)$ .

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Window Trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

"Wipe Sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques", or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Work Area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

"0-Bedroom Dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

**KEY: definitions, paint, lead-based paint**

**Date of Enactment or Last Substantive Amendment:** 2021~~May 3, 2012~~

**Notice of Continuation:** November 13, 2018

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)(i)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R307-841	Filing ID 53563

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	Multi-Agency State Office Building
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144820
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820

Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R307-841. Residential Property and Child-Occupied Facility Renovation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
On-site inspections have shown that remodel, repair, and painting workers are not always trained in a language workers can comprehend.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The amendment ensures that workers doing remodel, repair, and painting work are trained in a language they can comprehend.
A public hearing is set for Tuesday, August 3, 2021. Further details may be found below. The hearing will be cancelled should no request for one be made by Monday, August 2, at 10:00AM MDT. The final status of the public hearing will be posted on Monday, August 2, 2021, after 10:00AM MDT. The status of the public hearing may be checked at the following website location under the corresponding rule.
<a href="https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment">https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment</a>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget because the rule amendments do not impact the state government.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because the rule amendments do not apply to them.

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

There are no anticipated costs or savings to small businesses because the amendment does not incur fiscal impact, as training is already a requirement.

**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 because the amendment does not incur fiscal impact, as training is already a requirement.

**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 due to this rule amendment because it does not apply to them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons as a result of this rulemaking because the amendments are only specifying existing requirements, not making further requirements.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The rule amendments to Rule R307-841 are not anticipated to have fiscal impact on businesses because training is already required, and these amendments are only specifying. Kimberly D. Shelley, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

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

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 19-2-104(1)(i)		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/03/2021

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

On:	At:	At:
08/03/2021	10:00 AM MDT	meet.google.com/pfs-bges-gjs or by phone: +1 617-675-4444 PIN: 783 369 570 5377#

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

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of

Administrative Rules on or before the date designated in Box 10.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	05/18/2021
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### R307. Environmental Quality, Air Quality.

#### R307-841. Residential Property and Child-Occupied Facility Renovation.

##### R307-841-1. Purpose.

This rule implements 40 CFR 745, regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

##### R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the

lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

##### R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm<sup>2</sup>) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b),

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the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

### **R307-841-4. Information Distribution Requirements.**

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

#### **R307-841-5. Work Practice Standards.**

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(j)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

**R307-841-6. Recordkeeping and Reporting Requirements.**

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(ii)(A).



(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project in a language that the workers can comprehend, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

#### **R307-841-7. Firm Certification.**

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

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If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

### **R307-841-8. Renovator Certification and Dust Sampling Technician Certification.**

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal

program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year training certificate expiration date. Individuals who take a renovator refresher course that does not include hands-on training will have a training course certificate expiration date 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will have a training course certificate expiration date 5 years from the date they complete the training. Individuals who take the renovator refresher course without hands-on training must, for their next renovator refresher course, take a course that includes hands-on training.

(e) An individual shall be re-certified as a renovator or a dust sampling technician if the individual successfully completes the appropriate lead-based paint accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by

EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

**R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.**

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

**KEY: paint, lead-based paint, lead-based paint renovation**  
**Date of Enactment or Last Substantive Amendment: 2021[May 9, 2017]**  
**Notice of Continuation: December 9, 2019**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R307-842	Filing ID	53564

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	Multi-Agency State Office Building
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144820
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Liam Thraikill	801-536-4419	lthraikill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R307-842. Lead-Based Paint Activities
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The Environmental Protection Agency (EPA) lowered dust-lead hazard standards and dust-lead clearance levels. In order to maintain EPA-authorization, our program must implement these rule changes by January 6, 2022. Specific language was added to the previously vague language regarding lead-based paint abatement. There was also language added to prevent training course providers from combining different lead-based paint discipline courses, as they should be taught separately.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Dust-lead hazard standards and dust-lead clearance levels have been reduced from 40 microgram/ft <sup>2</sup> and 250 microgram/ft <sup>2</sup> to 10 microgram/ft <sup>2</sup> and 100 microgram/ft <sup>2</sup> on floors and windowsills, respectively. Language concerning containment of the work area, waste storage and disposal, and occupant safety during a lead-based paint abatement has been added. The new rule also specifies that training courses cannot be combined for any portion of the course and must be taught completely separately.
A public hearing is set for Tuesday, August 3, 2021. Further details may be found below. The hearing will be cancelled should no request for one be made by Monday, August 2, at 10:00AM MDT. The final status of the public hearing will be posted on Monday, August 2, 2021, after 10:00AM MDT. The status of the public hearing may be checked at the following website location under the corresponding rule.
<a href="https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment">https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment</a>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget because the rule amendment does not impact the state government.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because the rule amendment does not apply to them.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
Small businesses will have to be more thorough with post-abatement cleaning in order to meet new dust-lead clearance levels. This could lead to slightly longer cleanup times and the increase of cleaning product use.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
Non-small businesses will have to be more thorough with post-abatement cleaning in order to meet new dust-lead clearance levels. This could lead to slightly longer cleanup times and the increase of cleaning product use.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There are no anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this rule amendment because it does not apply to them.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no anticipated compliance costs for affected persons as a result of this rulemaking because the amendments are merely clarifications and specifications to existing requirements.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
The rule amendments in Rule R307-842 are not expected to result in fiscal impacts on businesses other than the minimal impacts discussed above. Beyond longer clean-up times and the potential for using more cleaning products, there are no other anticipated costs. Kimberly D. Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Subsection 19-2-104(1)(i)		

**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. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>	08/03/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
08/03/2021	10:00 AM MDT	meet.google.com/pfs-bges-gjs or by phone: +1 617-675-4444 PIN: 783 369 570 5377#

<b>10. This rule change MAY become effective on:</b>	08/10/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	05/18/2021
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**R307. Environmental Quality, Air Quality.**

**R307-842. Lead-Based Paint Activities.**

**R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.**

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines. Training courses taught in Utah must be accredited by the director. All e-learning renovator refresher courses originating from companies based in Utah must also be accredited by the director.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) Initial and refresher courses shall be specific to each discipline and shall be conducted as separate and distinct courses and not combined with any other training during the period of the course.

([e]d) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

([e]e) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application

## NOTICES OF PROPOSED RULES

and all the requirements and limitations specified in any accreditation documents issued to training programs.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer initial courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. A training program accredited by the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide initial training courses that meet the following training requirements:

(i) The initial inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial inspector course are contained in paragraph (4)(a) of this section;

(ii) The initial risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The initial supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial supervisor course are contained in paragraph (4)(c) of this section;

(iv) The initial project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the initial project designer course are contained in paragraph (4)(d) of this section;

(v) The initial abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The initial renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial renovator course are contained in paragraph (4)(f) of this section; and

(vii) The initial dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial dust sampling technician course are contained in paragraph (4)(g) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught;

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch; and

(viii) For renovator, dust sampling technician, or lead-based paint activities course completion certificates, the expiration date of the training certificate.

(i) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

NOTICES OF PROPOSED RULES

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

- (A) Notification type (original, update, or cancellation);
- (B) Training program name, address, and telephone number;
- (C) Course discipline, type (initial/refresher), and the language in which instruction will be given;
- (D) Date(s) and time(s) of training;
- (E) Training location(s) telephone number, and address;
- (F) Principal instructor's name; and
- (G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the

course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notification must be received by the director no later than 10 business days following course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via written notification or electronically using the Utah Division of Air Quality electronic notification system no later than the 10<sup>th</sup> day of the month and include all students trained in the previous month. Written notification for any e-learning renovator refresher course, can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(ii) The notification must include the following:

- (A) Training program name, address, and telephone number;
- (B) Course discipline and type (initial/refresher);
- (C) Date(s) of training;
- (D) The following information for each student who took the

course:

- (I) Name,
- (II) Address,
- (III) Date of birth,
- (IV) Course completion certificate number,
- (V) Course test score,
- (VI) For renovator or dust sampling technician courses, a digital photograph of the student, and
- (VII) For renovator refresher courses, the expiration date of the training certificate;
- (E) Training manager's name and signature; and
- (F) Utah Division of Air Quality Lead-Based Paint Program training verification statement.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. A training program accredited by the director to offer lead-based paint courses in the specific disciplines listed in paragraph (4) must ensure that its courses of study include, at a minimum, the following course topics.



(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities;

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing;

(v) Paint, dust, and soil sampling methodologies;

(vi) Clearance standards and testing, including random sampling;

(vii) Preparation of the final inspection report; and

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor;

(ii) Collection of background information to perform a risk assessment;

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards;

(v) Lead hazard screen protocol;

(vi) Sampling for other sources of lead exposure;

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards;

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Liability and insurance issues relating to lead-based paint abatement;

(v) Risk assessment and inspection report interpretation;

(vi) Development and implementation of an occupant protection plan and abatement report;

(vii) Lead-based paint hazard recognition and control;

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods;

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods;

(xi) Clearance standards and testing;

(xii) Cleanup and waste disposal; and

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer;

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects;

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects;

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects;

(v) Clearance standards and testing for large scale abatement projects; and

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Lead-based paint hazard recognition and control;

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction; and

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertain to lead-based paint and renovation activities;

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint;

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA;

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards;

(vii) Interior and exterior containment and cleanup methods;

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing;

(ix) Waste handling and disposal;

(x) Providing on-the-job training to other workers; and

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and renovation activities;

(iv) Dust sampling methodologies;

(v) Clearance standards and testing; and

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and

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dust sampling technician. A training program accredited by the director to offer refresher training must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(c) Except for e-learning renovator refresher courses and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding initial training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through (3)(e), (3)(f)(viii), and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), (3)(f)(viii) and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation,

including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

- (i) Misrepresented the contents of a training course to the director and/or the student population;
- (ii) Failed to submit required information or notifications in a timely manner;
- (iii) Failed to maintain required records;
- (iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;
- (v) Failed to comply with the training standards and requirements in this section;
- (vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or
- (vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

**R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.**

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

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(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited initial training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The initial training course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving an initial training course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her initial training course completion certificate, the individual must retake the appropriate initial training course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited initial training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The initial training course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate initial training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

## (4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher training course completion certificate. For the supervisor, inspector, or risk assessor disciplines, if more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test, then the individual must also pass the certification exam in the appropriate discipline offered by the director. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

## (5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification or re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the director;

(iv) Failed to maintain required records; or

(v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

**R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.**

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

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(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;  
 (ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

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- (J) Approximate square footage/acreage to be abated;
- (K) Brief description of abatement activities to be performed;

and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, hand delivery, or by email on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) Containing the work area. Before beginning the abatement activity, the firm must isolate the work area so that no dust or debris leaves the work area while the abatement is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the abatement is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior abatement. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material and sealed with duct tape or equivalent. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing abatement or a sufficient distance to contain the dust, whichever is

greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior abatement. The firm must:

(A) Close all doors and windows within 20 feet of the abatement. On multi-story buildings, close all doors and windows within 20 feet of the abatement on the same floor as the abatement, and close all doors and windows on all floors below that are the same horizontal distance from the abatement;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing abatement or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the abatement will affect surfaces within 10 feet of the property line, the lead-based paint firm must erect vertical containment or equivalent precautions in containing the work area to ensure that dust and debris from the abatement does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

([f]g) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(h) Waste from abatement.

(i) Waste from the abatement activity must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the abatement, waste that has been collected from the abatement must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from the abatement, the firm must contain the waste to prevent release of dust and debris.



(~~g~~i) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(~~h~~j) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are ~~40~~10 ug/ft<sup>2</sup> for floors, ~~250~~100 ug/ft<sup>2</sup> for interior window sills, and 400 ug/ft<sup>2</sup> for window troughs.

(ix) Occupants of the home shall not be allowed into the abatement work area until clearance dust sample results are received by the inspector or risk assessor and are found to be acceptable according to dust-lead clearance level standards.

(~~i~~k) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(~~j~~l) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

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(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than [40]10 ug/ft<sup>2</sup> for floors and [250]100 ug/ft<sup>2</sup> for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who

prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

**R307-842-4. Lead-Based Paint Activities Requirements.**

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

**R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.**

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

**KEY: paint, lead-based paint, lead-based paint abatement**  
**Date of Enactment or Last Substantive Amendment: 2021|~~May 9, 2017~~**

**Notice of Continuation: December 9, 2019**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-200	Filing ID 53576

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
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Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R311-200. Underground Storage Tanks: Definitions

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

Several definitions in this rule are no longer necessary due to changes in the federal underground storage tank (UST) regulations or the Utah UST rules, or are redundant, because they are now part of the federal UST regulations.

Adds definition "Certified sampler" to reflect the sampling of other media as well as groundwater and soil.

Adds definition "Claimant" to clarify who is eligible to make reimbursement claims against the Petroleum Storage Tank Trust Fund.

Adds definition "Cost Guidelines" to simplify reference to the "Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021".

Moves definition "Related parties" from Section R311-207-4 to a more relevant location, Underground Storage Tanks: Definitions.

Modifies UST testing to include exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

In Subsection R311-200-1(2), removes definitions that are no longer needed, due to changes in the federal UST regulations or changes in the state UST rules.

In Subsection R311-200-1(2)(f), adds definition "Certified sampler."

In Subsection R311-200-1(2)(i), adds definition "Claimant."

In Subsection R311-200-1(2)(m), adds definition "Cost Guidelines."

In Subsection R311-200-1(2)(mm), adds definition "Related parties."

In Subsection R311-200-1(2)(hhh)(D), modifies the definition of UST Testing to include any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

Updates this rule and ACT references, as applicable.

Updates punctuation, capitalization, structure, and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impacts non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impact on other persons revenues or expenditures because all proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Any cost or benefits to affected persons relating to the defined terms in this rule will be addressed in the relevant rule.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

No fiscal impacts on businesses are expected. Any impact would be found in the other rules to which the definitions apply. Kim Shelley, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelly, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

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

On:	At:	At:
07/15/2021	2:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. Underground Storage Tanks: Definitions.**

**R311-200-1. Definitions.**

(1) ~~Refer to Section 19-6-402 for definitions not found in this rule.~~ Terms used in this rule are defined in Section 19-6-402.

(2) ~~In addition, t[F] or purposes of [underground storage tank] this rule[s]:~~

(a) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(b) "As-built drawing" for the purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size ~~shall~~ must be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(c) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the ~~[underground storage tank]~~ JUST system.

~~(d) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.~~

([e]d) "Certificate" means a document that evidences certification.

([f]e) "Certification" means approval by the ~~Director~~ director or the Board to engage in the activity applied for by the individual.

(f) "Certified sampler" is the person who performs environmental media sampling for compliance with Utah UST rules.

(g) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2([d]s).

(h) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(i) "Claimant" means any person eligible to submit requests for reimbursement of costs against the Petroleum Storage Tank Trust Fund as determined by the director.

([i]j) "Community ~~Water~~water ~~System~~system" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

([j]k) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

([k]l) "Consultant" is a person who is a certified ~~underground storage tank~~UST consultant according to Subsection 19-6-402([6]7) and Section R-311-201-2.

(m) "Cost Guidelines" refers to the Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021. This document contains personnel classifications, requirements, and rates, general tasks and responsibilities for personnel, maximum allowable equipment and laboratory rates, and specific items or activities that will and will not be reimbursed by the Fund.

([H]n) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement, and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

([m]o) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the ~~Director~~director following the criteria in Rule R311-211.

([n]p) "Department" means the Utah Department of Environmental Quality.

([o]q) "Eligible exempt ~~underground storage tank~~UST" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in Subsection 19-6-415(1).

([p]r) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

([q]s) "EPA" means the United States Environmental Protection Agency.

([r]t) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the ~~Director~~director.

([s]u) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

([t]v) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of an ~~underground storage tank~~UST.

([u]w) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

~~[(v) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.]~~

([w]x) "Injury or ~~Damages~~damages from a ~~Release~~release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in Subsection R311-211-6([a]l).

([x]y) "In use" means that an operational, inactive or abandoned ~~underground storage tank~~UST contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to the safety of human health~~[-safety]~~ or the environment, as determined by the ~~Director~~director.

([y]z) "Lapse" in reference to the ~~Certificate~~certificate of ~~Compliance~~compliance and coverage under the ~~Petroleum Storage Tank Trust Fund~~Environmental Assurance Program, means to terminate automatically.

([z]aa) "Native soil" means any soil that is not backfill material,~~[-which]~~ is naturally occurring, and is most representative of the localized subsurface lithology and geology.

([aa]bb) "No Further Action determination" means that the ~~Director~~director has evaluated information provided by responsible parties or others about the site and determined that any detectable petroleum contamination from a particular release does not present ~~an unacceptable risk~~a threat to public health or the environment based upon Board established criteria in Title R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

~~[(bb) "Notice of agency action" means any enforcement notice, notice of violation, notice of non compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.]~~

(c) "Occurrence" in reference to ~~Subsection~~Section R311-208-4 means a separate petroleum fuel delivery to a single tank.

(dd) "Owners and operators" means either an owner or operator, or both owner and operator.

(ee) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental media samples during UST closure activities as outlined in Section R311-205-2.

(ff) "Permanently closed" means ~~underground storage tanks~~UST that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Rule R311-202.

(gg) "Petroleum storage tank" means a storage tank that contains petroleum as defined by ~~Section~~Subsection 19-6-402([20]2l).

(hh) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(ii) "Petroleum ~~storage~~Storage ~~tank~~Tank ~~trust~~Trust ~~fund~~Fund" means the ~~fund~~Fund created by Section 19-6-409.

(jj) "Potable ~~Drinking~~drinking ~~Water~~water ~~Well~~well" means any hole (dug, driven, drilled, or bored) that extends into the

NOTICES OF PROPOSED RULES

earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(kk) "Public ~~[Water]water [System]system~~" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(ll) "Registration fee" means ~~[underground storage tank]UST~~ registration fee.

~~[(mm) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.]~~

(mm) "Related parties" for the purposes of Section R311-207-4, means organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(nn) "Secondary ~~[Containment]containment~~", for the purposes of Section R311-203-6, means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space ~~[shall]must~~ meet the requirements of 40 CFR 280.43(g).

(oo) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(pp) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, incorporating 40 CFR 280 Subparts E and F.

(qq) "Site investigation" is work performed by the owner or operator, or ~~[his]their~~ designee, when gathering information for reports required for Utah ~~[underground storage tank]UST~~ rules.

(rr) "Site plat" for the purpose of notification[?] or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but ~~[shall]must~~ in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former

UST~~[s]s~~; extent of any excavation~~[s]s~~; ~~[and known contamination and]~~location and volume of any stockpiled soil; locations, ~~[and]~~depths, and analytical results of all environmental media samples collected; locations and total depths of borings or permanent[monitoring] wells, [soil borings] or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(ss) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(i) ~~[Fire]fire~~ and explosion hazards have been abated~~[-]~~;

(ii) ~~[Free]free~~ flow of the product out of the tank has been stopped.

(iii) ~~[Free]free~~ product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the ~~[Director]director~~, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6)[-];

(iv) ~~[Alternative]alternative~~ water supplies have been provided to affected parties whose original water supply has been contaminated by the release~~[-]~~; and

(v) ~~[A]a~~ soil or groundwater management plan or both have been submitted for approval by the ~~[Director]director~~.

(tt) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(uu) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(vv) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earth materials, such as concrete, steel, or plastic, that provide structural support.

(ww) "Third-party Class B operator" is any individual who is not the facility owner~~[?]or operator~~, or an employee of the owner~~[?]or operator~~ and who, by contract, provides the services outlined in R311-201-12~~[e]Z~~.

(xx) "Under~~[Dispenser]dispenser [Containment]containment~~", for the purposes of Section R311-203-6, means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburred risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(yy) "~~[Underground storage tank]UST~~ registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(zz) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(aaa) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(bbb) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

- (i) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;
- (ii) vent and product piping assembly;
- (iii) cathodic protection installation, service, and repair;
- (iv) internal lining;

- (v) secondary containment construction; and
- (vi) UST repair and service.
- (ccc) "UST installation permit fee" means the fee established by ~~[Section]~~ Subsection 19-6-411(2)(a)(ii).
- (ddd) "UST installer" means an individual who engages in underground storage tank installation.
- (eee) "UST removal" means the removal ~~[of an underground storage tank system, including permanently closing and] or permanent closure of an underground storage tank by taking out of service all or part of an underground storage tank system.~~
- (fff) "UST remover" means an individual who engages in underground storage tank removal.
- (ggg) "UST tester" means an individual who engages in ~~[UST]~~ underground storage tank testing.
- (hhh)(i) "UST testing" means:
  - (A) a testing method which can detect leaks in an underground storage tank system~~[-or]~~;
  - (B) testing for compliance with corrosion protection requirements~~[-or]~~;
  - (C) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components~~[-]; or~~ any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.
  - (ii) ~~[Testing]~~ testing methods must meet applicable performance standards:
    - (A) 40 CFR 280.40(a)(4), 280.43(c), and 280.44(b) for tank and product piping tightness testing~~[-];~~
    - (B) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping~~[-];~~
    - (C) 40 CFR 280.31(b) for cathodic protection testing[-];
    - (D) 40 CFR 280.35(a)(2) for overfill device inspection[-];
    - (E) 40 CFR 280.40(a)(3) for testing of mechanical and electronic release detection components[-]; and
    - (F) ~~[R311-206-11(e)(2)(C)]~~ interstitial testing for tank and piping secondary containment~~[ testing under R311-206-11].~~

**KEY: petroleum, underground storage tanks**  
**Date of Enactment or Last Substantive Amendment:**  
~~2021~~ January 1, 2017  
**Notice of Continuation: March 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-201	Filing ID 53577

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Environmental Response and Remediation
<b>Building:</b>	Multi Agency State Office Building
<b>Street address:</b>	195 North 1950 West

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Clarifies that services provided by a certified underground storage tank (UST) consultant applies to petroleum tanks and not hazardous substance tanks.
Provides a limited form of UST inspector certification for individuals who only need to do certain types of UST inspections.
Changes title of "groundwater and soil certification" to "certified sampler".
Changes "groundwater and soil" to "environmental media" to reflect sampling of other media, such as vapors.
Audits will be conducted based on random selection and at the discretion of the director to ensure accuracy and consistency of charges submitted for reimbursement.
Incorporate by reference "UST and LUST Performance Definitions as of October 2018" to replace outdated "EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix," which will be removed from incorporated by reference in Subsection R311-206-11(b)(1).
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
In Section R311-201-2, rewords certification requirements for clarity.

In Subsection R311-201-2(1), specifies that releases from hazardous substance USTs do not require a certified UST consultant.

In Subsection R311-201-2(2), adds limits to types of UST inspections that an applicant can perform. This limited certification may be issued by the director.

In Subsection R311-201-2(4), changes the title "groundwater and soil certification" to "certified sampler" to reflect sampling of other media. Changes "groundwater and soil" to "environmental media." Discussed in definitions Section R311-200-1.

In Sections R311-201-3 and R311-201-4, reorders requirements for "Application for Certification" and "Eligibility for Certification" for process clarity.

In Subsection R311-201-6(2), allows the director to audit records which support eligibility for certification, or performance of work for which certification is granted.

In Subsection R311-201-12(10), allows for operator training and registration, incorporate by reference the updated document "UST and LUST Performance Definitions as of October 2018" for documenting compliance.

Updates this rule and ACT references, as applicable.

Updates punctuation, capitalization, structure, and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The change to Section R311-201-2 is not expected to have any fiscal impact on state government revenues or expenditures because this is a clarification.

The change to Subsection R311-201-2(1) is not expected to have any fiscal impact on state government revenues or expenditures because this is a clarification.

The changes to Subsection R311-201-2(2), for the Department of Environmental Quality (DEQ) UST Inspectors, are approximately \$200 to \$400 a year. It will be easier for some state inspectors to get trained. The changes also eliminate the cost for taking training course which will save approximately \$200 per person. Only one to two state UST (DEQ) inspectors a year will take advantage of this.

The change to Subsection R311-201-2(4) is not expected to have any fiscal impact on state government revenues or expenditures because it reflects the common practice of

sampling other media, such as vapors, groundwater, and soil.

The change to Sections R311-201-3 and 201-4 is not expected to have any fiscal impact on state government revenues or expenditures because the reordering of sections is only for process clarity.

In the change to Subsection R311-201-6(2), the DEQ auditor will be a fiscal cost to the Division. DEQ Auditor's time charged for performing audits. Ensure accuracy and consistency of charges submitted and reimbursed. The fiscal cost will be inestimable. Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

In the change to Subsection R311-201-12(10), the fiscal cost is inestimable. If a Class A and/or Class B operator requires re-training the cost per person would be \$50 registration fee and approximately \$150 to re-take course. Over the last four years no one employed by state government needed to retrain. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

**B) Local governments:**

The change to Subsection R311-201-2(1) is not expected to have any fiscal impact on local governments revenues or expenditures because this is a clarification.

In the changes to Subsection R311-201-2(2), for local health department UST Inspectors, the fiscal benefit is approximately \$200 to \$400 a year. The changes simplify training process for state inspectors; and eliminates cost of training course, which will save approximately \$200 per person. Approximately one to two local health department UST inspectors a year will take advantage of this.

The change to Subsection R311-201-2(4) is not expected to have any fiscal impact on local governments' revenues or expenditures because it reflects the common practice of sampling other media, such as vapors, groundwater, and soil.

The change to Sections R311-201-3 and 201-4 is not expected to have any fiscal impact on local governments' revenues or expenditures because the reordering of sections is for process clarity.

In the change to Subsection R311-201-6(2), the fiscal cost is inestimable. Audits will be conducted based on random selection and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted for reimbursement.

In the change to Subsection R311-201-12(10), the fiscal cost is inestimable. If a Class A and/or Class B operator requires re-training, the cost per person will be \$50 registration fee and approximately \$150 to retake course. Over the past four years, no local government employees



required retraining. It is not possible to predict how these new compliance standards will affect the number of individuals requiring retraining.

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

The change to Subsection R311-201-2(1) is not expected to have any fiscal impacts on small businesses' revenues or expenditures because this is a clarification.

The change to Subsection R311-201-2(2) is not expected to have any fiscal impact on small businesses' revenues or expenditures because only employees of DEQ and local health departments can apply to become UST inspectors.

The change to Subsection R311-201-2(4) is not expected to have any fiscal impact on small businesses' revenues or expenditures because it reflects the common practice of sampling other media, such as vapors, groundwater, and soil.

The change to Sections R311-201-3 and 201-4 is not expected to have any fiscal impact on small businesses' revenues or expenditures because the reordering of sections is only for process clarity.

The change to Subsection R311-201-6(2) is inestimable for fiscal cost. Audits will be conducted based on random selection, and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted for reimbursement.

The change to Subsection R311-201-12(10) is inestimable for fiscal cost. If a Class A and/or Class B operator requires re-training, the cost per person will be \$50 registration fee and approximately \$150 to retake course. Over the past four years, only three people employed by small businesses required retraining. It is not possible to predict how these new compliance standards will affect the number of individuals requiring retraining.

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

The change to Subsection R311-201-2(1) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because this is a clarification.

The change to Subsection R311-201-2(2) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because only employees of DEQ and local health departments can apply to become UST inspectors.

The change to Subsection R311-201-2(4) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it reflects the common practice of sampling other media, such as vapors, groundwater, and soil.

The change to Sections R311-201-3 and 201-4 is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because the reordering of sections is only for process clarity.

In the change to Subsection R311-201-6(2), the fiscal cost is inestimable. Audits will be conducted based on random selection, and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted for reimbursement.

In the change to Subsection R311-201-12(10), the fiscal cost is inestimable. If a Class A and/or Class B operator requires re-training, the cost per person will be \$50 registration fee and approximately \$150 to retake course. Over the past four years, no one employed by non-small businesses required retraining. It is not possible to predict how these new compliance standards will affect the number of individuals requiring retraining.

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

The change to Subsection R311-201-2(1) is not expected to have any fiscal impact on other persons' revenues or expenditures because this is a clarification.

The change to Subsection R311-201-2(2) is not expected to have any fiscal impact on other persons' revenues or expenditures because only employees of DEQ and local health departments can apply to become UST inspectors.

The change to Subsection R311-201-2(3) will not affect persons other than UST owners/operators.

The change to Subsection R311-201-2(4) is not expected to have any fiscal impact on other persons' revenues or expenditures because it reflects the common practice of sampling other media, such as vapors, groundwater, and soil.

The change to Sections R311-201-3 and 201-4 is not expected to have any fiscal impact on other persons' revenues or expenditures because the reordering of sections is only for process clarity.

The change to Subsection R311-201-6(2) is not expected to have any fiscal impact on other persons' revenues or expenditures because it applies to those with certifications.

The change to Subsection R311-201-12(10) is not expected to affect persons other than the owner/operators of USTs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

NOTICES OF PROPOSED RULES

The change to Subsection R311-201-2(2) will be a benefit for certified inspectors because it allows a limited form of UST inspector certification for individuals who only need to do certain types of UST inspections.

In the change to Subsection R311-201-6(2), the fiscal cost is inestimable. Audits will be conducted based on random selection, and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted for reimbursement.

In the change to Subsection R311-201-12(10), the fiscal cost is inestimable. If a Class A and/or Class B operator requires re-training, the cost per person will be \$50 registration fee and approximately \$150 to retake course. Over the past four years, only three people employed by small businesses required retraining. It is not possible to predict how these new compliance standards will affect the number of individuals requiring retraining.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

State and local health department UST Inspectors will benefit from not having to complete all the training needed to become an UST Inspector if they are only doing certain types of UST Inspections. Some Class A and/or Class B operators may incur a cost if they are unable to meet the new compliance standards, but this cost is inestimable. Kim Shelley, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-1-301	Section 19-6-403	Section 63G-4-503
Section 19-6-105	Section 63G-4-102	Section 19-6-402
Sections 63G-4-201 through 63G-4-205		

**Incorporations by Reference Information**

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

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	UST and LUST Performance Definitions as of October 2018
<b>Publisher</b>	US EPA
<b>Date Issued</b>	April 10, 2018
<b>Issue, or version</b>	<a href="https://www.epa.gov/ust/ust-performance-measures">https://www.epa.gov/ust/ust-performance-measures</a>

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

<b>10. This rule change MAY become effective on:</b>	10/29/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**  
**R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.**  
**R311-201-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-201-2. ~~[Certification]~~Requirement for Certification.**

(1) ~~[Certified]~~a certified UST ~~[Consultant]~~consultant is required as specified in Subsection 19-6-402(7)(b).

(a) ~~[No]~~no person shall provide or contract to provide the following services without having certification to conduct these activities:

- ~~\_\_\_\_\_~~(i) provide information, opinions, or advice relating to UST release management~~[-];~~
- ~~\_\_\_\_\_~~(ii) abatement~~[-];~~
- ~~\_\_\_\_\_~~(iii) investigation~~[-];~~
- ~~\_\_\_\_\_~~(iv) corrective action~~[-];~~ or
- ~~\_\_\_\_\_~~(v) evaluation for a fee, or in connection with the services for which a fee is charged~~[-];~~ ~~[without having certification to conduct these activities;-]~~

~~\_\_\_\_\_~~(A) except as outlined in ~~[Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and]~~Subsection R311-204-5(~~[b]2~~)~~[-];~~ and

~~\_\_\_\_\_~~(B) except for releases from a hazardous substance UST system, as defined in 40 CFR 280.10.

~~\_\_\_\_\_~~(b) ~~[The Certified]~~a certified UST ~~[Consultant]~~consultant ~~[shall be the person directly overseeing UST release related work. The Certified UST Consultant shall]~~must:

- ~~\_\_\_\_\_~~(i) make pertinent project management decisions~~[-and be responsible for];~~
- ~~\_\_\_\_\_~~(ii) ~~[ensuring]~~ensure ~~[that]~~all aspects of ~~[UST]~~petroleum storage tank-related work are performed in an appropriate manner~~[-];~~ and
- ~~\_\_\_\_\_~~(iii) ~~[all related documentation for work performed submitted to the Director shall contain the Certified UST Consultant's signature]~~sign all documentation to be submitted to the director for work performed.

~~\_\_\_\_\_~~(c) ~~[Any]~~any UST release abatement, investigation, ~~[and]~~or corrective action work performed by a person who is not

certified or who is not working under the direct supervision of a ~~[Certified]~~certified UST ~~[Consultant]~~consultant, and is performed for compliance with Utah ~~[underground storage tank release related]~~UST rules, ~~[except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b),]~~may be rejected by the ~~[Director]~~director.

(2) UST ~~[Inspector]~~inspector. No person shall conduct an ~~[underground storage tank]~~UST inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct ~~[these]~~such activities.

~~\_\_\_\_\_~~(a) the director may issue a limited certification restricting the type of UST inspections the applicant can perform.

~~\_\_\_\_\_~~(3) UST tester. No owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.

~~\_\_\_\_\_~~(a) ~~[Except]~~except as outlined in Subsections R311-201-2(c)(2) and R311-201-2(c)(3), no person shall conduct UST testing without having certification to conduct such activities.~~[- Except as outlined in Subsection (c)(2) and (c)(3), no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.]~~

~~\_\_\_\_\_~~(b) ~~[An]~~an individual certified under Rule R311-201 as ~~[an]~~a UST installer may:

- ~~\_\_\_\_\_~~(i) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;
- ~~\_\_\_\_\_~~(ii) perform an overflow device inspection to meet the requirements of 40 CFR 280.35(a)(2);
- ~~\_\_\_\_\_~~(iii) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i), 280.40(a)(3)(ii), 280.40(a)(3)(iv), and 280.40(a)(3)(v); and
- ~~\_\_\_\_\_~~(iv) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of ~~[R311-206-11(e)(2)]~~40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

~~\_\_\_\_\_~~(c) ~~[An]~~a UST owner or operator may:

- ~~\_\_\_\_\_~~(i) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used~~[-];~~ and
- ~~\_\_\_\_\_~~(ii) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of ~~[R311-206-11(e)(2)]~~40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

~~\_\_\_\_\_~~(d) ~~[Certification]~~certification by the ~~[Director]~~director under this ~~[Rule]~~rule ~~[shall apply]~~applies only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the ~~[Director to be equivalent to the manufacturer training]~~director, for ~~[these]~~the following types of testing:

- ~~\_\_\_\_\_~~(i) tank, line, and leak detector testing;
- ~~\_\_\_\_\_~~(ii) interstitial tests of tanks and piping; and
- ~~\_\_\_\_\_~~(iii) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.

~~\_\_\_\_\_~~(e) ~~[The Director]~~the director may issue a limited certification restricting the type of UST testing the applicant can perform.

NOTICES OF PROPOSED RULES

(4) ~~[Groundwater and soil]~~Certified sampler. No person shall conduct ~~[groundwater or soil]~~environmental media sampling for determining levels of contamination which may have occurred from regulated ~~[underground storage tanks]~~USTs without having certification to conduct these activities.

~~(a) [No]no~~ owner or operator shall allow any ~~[groundwater or soil]~~environmental media sampling for determining levels of contamination which may have occurred from regulated ~~[underground storage tanks]~~USTs to be conducted on a tank under their ownership or operation unless the person conducting the ~~[groundwater or soil]~~environmental media sampling is certified according to Rule R311-201.

(5) UST ~~[Installer]installer~~. No person shall install ~~[an underground storage tank]~~a UST without having certification or the on-site supervision of an individual having certification to conduct these activities.

~~(a) [No]no~~ owner or operator shall allow the installation of ~~[an underground storage tank]~~a UST, ~~[to be conducted on a tank]or any component thereof~~, under their ownership or operation unless the person installing the ~~[tank]~~UST is certified according to Rule R311-201.

~~(b) [The Director]the director~~ may issue a limited certification restricting the type of UST installation the applicant can perform.

(6) UST ~~[Remover]remover~~. No person shall remove ~~[an underground storage tank]~~a UST without having certification or the on-site supervision of an individual having certification to conduct these activities.

~~(a) [No]no~~ owner or operator shall allow the removal of ~~[an underground storage tank]~~a UST, ~~[to be conducted on a tank]or any component thereof~~, under their ownership or operation unless the person conducting the ~~[tank]~~UST removal is certified according to Rule R311-201.

**~~[R311-201-3. Application for Certification.~~**

~~(1) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Director to demonstrate that the applicant~~

~~(a) meets applicable eligibility requirements specified in Section R311-201-4 and~~

~~(b) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.~~

~~(2) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-4 and meets the standards described in Section R311-201-6, the Director shall issue to the applicant a certificate.~~

~~(3) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Section R311-201-5.~~

**R311-201-4]3. Eligibility for Certification.**

(1) Certified UST ~~[Consultant]consultant~~.

(a) ~~[Training]training~~. For initial and renewal certification, an applicant must meet:

~~(i) Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law[;]; and~~

~~(ii) within a six-month period prior to application, [must]complete an approved training course or equivalent in a program approved by the [Director]director to provide training to include the following areas:~~

~~(A) state and federal statutes[;];~~

~~(B) rules and regulations[;];~~

~~(C) [groundwater and soil]environmental media sampling[;]; and~~

~~(D) [other applicable and related Department of Environmental Quality]department policies.~~

~~(b) [Experience]experience~~. Each applicant must provide with the application a signed statement or other evidence demonstrating:

~~(i) three years, within the past seven years, of appropriately related experience in [underground storage tank]UST release abatement, investigation, and corrective action[;]; or~~

~~(ii) an equivalent combination of appropriate education and experience, as determined by the [Director]director.~~

~~(c) [Education]education~~. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

~~(i) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the [Director]director;~~

~~(ii) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act, or equivalent certification as determined by the [Director]director; or~~

~~(iii) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the [Director]director.~~

~~(d) [Initial Certification Examination]initial certification examination~~. Each applicant who is not certified pursuant to ~~Section R311-201-3]4~~ must successfully pass an initial certification examination or equivalent, administered under the direction of the ~~[Director]director~~.

~~(i) [The Director]the director~~ shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4]3(~~[a]1~~)(~~[1]a~~).

~~(e) [Renewal Certification Examination]renewal certification examination~~. Certified UST ~~[Consultants]consultants~~ seeking to renew their certification pursuant to ~~Section R311-201-5~~ must successfully pass a renewal certification examination, or equivalent administered under the direction of the ~~[Director]director~~.

~~(i) [The Director]the director~~ shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4]3(~~[a]1~~)(~~[1]a~~).

~~(ii) [The Director]the director~~ may offer a renewal certification examination that is less comprehensive than the initial certification examination.

~~(f) [Examination]examination~~ for ~~[Revoked]revoked~~ or ~~[Expired Certification]expired certification~~. Any applicant who is not a ~~[Certified]certified~~ UST ~~[Consultant]consultant~~ on the date the renewal certification examination is given[;] because the consultant's prior ~~[UST Consultant]certification~~ was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under ~~Subsection R311-201-4]3(~~[a]1~~)(4]d~~).

(2) UST ~~[Inspector]inspector~~.

(a) ~~[Training]training~~. For initial certification, an applicant must have successfully completed ~~[an underground storage tank]a UST~~ inspector training course or equivalent within the six month period prior to application.

(i) ~~[The]the~~ training course ~~[shall]must~~ be approved by the ~~[Director]director~~ and shall include instruction in the following areas:

- ~~(A) corrosion[?];~~
- ~~(B) geology[?];~~
- ~~(C) hydrology[?];~~
- ~~(D) tank handling[?];~~
- ~~(E) tank testing[?];~~
- ~~(F) product piping testing[?];~~
- ~~(G) disposal[?];~~
- ~~(H) safety[?];~~
- ~~(I) sampling methodology[?];~~
- ~~(J) state site inspection protocol[?];~~
- ~~(K) state and federal statutes[?]; and~~
- ~~(L) Utah UST rules and regulations.~~

(ii) ~~[Renewal]renewal~~ certification training will be established by the ~~[Director]director~~.

(iii) ~~[The]the~~ applicant must provide documentation of training with the application.

(b) ~~[Certification Examination]certification examination~~. An applicant must successfully pass a certification examination administered under the direction of the ~~[Director]director~~.

(i) ~~[The Director]the director~~ shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-~~[4]3~~(~~[b]2~~)(~~[+]~~a), and the standards and criteria against which the applicant will be evaluated.

(ii) ~~[The Director]the director~~ may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(3) UST ~~[Tester]tester~~.

(a) ~~[Financial Assurance]financial assurance~~. An applicant or applicant's employer ~~[shall]must~~ have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater.

(i) ~~[An]an~~ applicant who uses ~~[his]their~~ employer's financial assurance must also provide evidence of ~~[his]their~~ employer's approval of the certification application.

(b) ~~[Training]training~~.

~~(i)~~ For initial certification, an applicant ~~[shall]must~~ complete ~~[underground storage tank]UST~~ testers training within the six month period prior to application, in a program approved by the ~~[Director]director~~, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

(i) ~~[Renewal]renewal~~ certification training will be established by the ~~[Director]director~~.

(A) ~~[The]the~~ applicant must provide documentation of training with the application.

(ii) ~~[For]for~~ initial certification to perform the types of testing specified in Subsection R311-201-2(~~[e]3~~)(~~[3]c~~), an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that ~~[he]they~~ will be using, or a training course determined by the ~~[Director]director~~ to be equivalent to the manufacturer training, in the correct use of the

~~[necessary]equipment[?]~~ and testing procedures required to operate the UST test system.

(iii) ~~[An]an~~ applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that ~~[he]they~~ will be using, or training as determined by the ~~[Director]director~~ to be equivalent to the manufacturer training, in the correct use of the ~~[necessary]equipment[?]~~ and testing procedures required to operate the UST test system.

(A) ~~[For]for~~ renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate.

(~~[[iii]]iv~~) ~~[Cathodic]cathodic~~ protection testing. For initial and renewal of certification, the applicant ~~[shall]must~~ provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12 ~~with the application~~. ~~[The applicant shall provide documentation of training with the application.]~~

(c) ~~[Performance Standards]performance standards of [Equipment]equipment~~. An applicant ~~[shall]must~~ submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1(~~[b]2~~)(~~[60]hhh~~)(~~[B]ii~~).

(i) ~~[This]this~~ documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the ~~[Director]director~~ and submitted at the time of application for certification. ~~[The documentation shall be submitted at the time of application for certification.]~~

(d) ~~[Certification Examination]certification examination~~. An applicant must successfully pass a certification examination administered under the direction of the ~~[Director]director~~.

(i) ~~[The Director]the director~~ shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-~~[4]3~~(~~[e]3~~)(~~[2]b~~), and the standards and criteria against which the applicant will be evaluated.

(ii) ~~[The Director]the director~~ may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(4) ~~[Groundwater and soil]Certified~~ sampler.

(a) ~~[Training]training~~. For initial certification an applicant ~~[shall]must~~ successfully complete ~~[an underground storage tank groundwater and soil]a petroleum storage tank environmental media~~ sampler training course or equivalent within the six month period prior to application.

(i) ~~[The]the~~ training course ~~[shall]must~~ be approved by the ~~[Director]director~~ and shall include instruction in the following areas:

- ~~(A) chain of custody[?];~~
- ~~(B) decontamination[?];~~
- ~~(C) EPA testing methods[?];~~
- ~~(D) [groundwater and soil]environmental media sampling protocol[?];~~
- ~~(E) preservation of samples during transportation[?];~~
- ~~(F) coordination with Utah certified [labs]laboratories[?]; and~~
- ~~(G) state and federal statutes, rules, and regulations.~~

(ii) ~~[Renewal]renewal~~ certification training will be determined by the ~~[Director]director~~.

(A) ~~[The]the~~ applicant shall provide documentation of training with the application.

(b) ~~[Certification Examination]~~certification examination. An applicant must successfully pass a certification examination administered under the direction of the ~~[Director]~~director.

(i) ~~[The Director]~~the director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-~~[4]3~~(~~[d]4~~)(~~[+]~~a), and the standards and criteria against which the applicant will be evaluated.

(ii) ~~[The Director]~~the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(5) UST ~~[Installer]~~installer.

(a) ~~[Financial]~~financial assurance. An applicant or the applicant's employer ~~[shall]~~must have insurance, surety bonds, liquid company assets, or other appropriate kinds of financial assurance which covers ~~[underground storage tank]~~UST installation and which, in combination, represents an unencumbered value of not less than the largest ~~[underground storage tank]~~UST installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) ~~[Evidence]~~evidence of financial assurance shall be provided with the application.

(ii) ~~[An]~~an applicant who uses ~~[his]~~their employer's financial assurance must also provide evidence of ~~[his]~~their employer's approval of the application.

(b) ~~[Training]~~training. For initial certification, an applicant must have successfully completed ~~[an underground storage tank]~~a UST installer training course or equivalent within the six-month period prior to the application.

(i) ~~[The]~~the training course ~~[shall]~~must be approved by the ~~[Director]~~director, and shall include instruction in the following areas:

- ~~(A)~~ tank installation~~[-]~~;
- ~~(B)~~ pre-installation tank testing~~[-]~~;
- ~~(C)~~ product piping testing~~[-]~~;
- ~~(D)~~ excavation~~[-]~~;
- ~~(E)~~ anchoring~~[-]~~;
- ~~(F)~~ backfilling~~[-]~~;
- ~~(G)~~ secondary containment~~[-]~~;
- ~~(H)~~ leak detection methods~~[-]~~;
- ~~(I)~~ piping~~[-]~~;
- ~~(J)~~ electrical~~[-]~~; and
- ~~(K)~~ state and federal statutes, rules, and regulations.

(ii) ~~[The]~~the applicant must provide documentation of training with the application.

(c) ~~[Experience]~~experience. Each applicant must provide with ~~[his]~~their application a sworn statement or other evidence that ~~[he has]~~they have actively participated in a minimum of three ~~[underground storage tank]~~UST installations.

(d) ~~[Certification Examination]~~certification examination. An applicant must successfully pass a certification examination administered under the direction of the ~~[Director]~~director.

(i) ~~[The Director]~~the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-~~[4]3~~(~~[e]5~~)(~~[2]~~b), and the standards and criteria against which the applicant will be evaluated.

(ii) ~~[The Director]~~the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) UST ~~[Remover]~~remover.

(a) ~~[Financial]~~financial assurance. An applicant or the applicant's employer ~~[shall]~~must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers ~~[underground storage tank]~~UST removal and which, in combination, represents an unencumbered value of not less than the largest ~~[underground storage tank]~~UST removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) ~~[Evidence]~~evidence of financial assurance shall be provided with the application.

(ii) ~~[An]~~an applicant who uses ~~[his]~~their employer's financial assurance must also provide evidence of ~~[his]~~their employer's approval of the application.

(b) ~~[Training]~~training. For initial certification, an applicant must have successfully completed ~~[an underground storage tank]~~a UST remover approved training course or equivalent within the six-month period prior to the application.

(i) ~~[The]~~the training course ~~[shall]~~must be approved by the ~~[Director]~~director and shall include instruction in the following areas:

- ~~(A)~~ tank removal~~[-]~~;
- ~~(B)~~ tank removal safety practices~~[-]~~; and
- ~~(C)~~ state and federal statutes, rules, and regulations.

(ii) ~~[The]~~the applicant must provide documentation of training with the application.

(c) ~~[Experience]~~experience. Each applicant must provide with ~~[his]~~their application a sworn statement or other evidence that ~~[he has]~~they have actively participated in a minimum of three ~~[underground storage tank]~~UST removals.

(d) ~~[Certification Examination]~~certification examination. An applicant must successfully pass a certification examination administered under the direction of the ~~[Director]~~director.

(i) ~~[The Director]~~the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-~~[4]3~~(~~[f]6~~)(~~[2]~~b), and the standards and criteria against which the applicant will be evaluated.

(ii) ~~[The Director]~~the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

**R311-201-4. Application for Certification.**

(1) Any individual may apply for certification by paying any applicable fees and by submitting an application to the director to demonstrate that the applicant

(a) meets applicable eligibility requirements specified in Section R311-201-3; and

(b) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.

(2) Applications submitted under Subsection R311-201-4(a) shall be reviewed by the director for determination of eligibility for certification.

(a) if the director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the standards described in Section R311-201-6, the director shall issue to the applicant a certificate.

(3) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8.

(a) certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

**R311-201-5. Renewal.**

(1) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(a) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in Section R311-201-4 and meets the applicable performance standards specified in Section R311-201-6;

(b) paying any applicable fees;

(c) passing a certification renewal examination.

(2) If the ~~Director~~director determines that the applicant meets the applicable eligibility requirements of Section R311-201-4 and the applicable performance standards of Section R311-201-6, the ~~Director~~director shall reissue the certificate to the applicant.

(3) Renewal certificates shall be issued for a period equal to the initial certification period and shall be:

(a) subject to inactivation under Section R311-201-8; and

(b) subject to revocation under Section R311-201-9.

(4) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under Section R311-201-3 for the applicable certificate before receiving the renewal certification.

(a) except as provided in Subsection R311-201-4 for certified UST consultants.

**R311-201-6. Standards of Performance.**

(1) Individuals who are certified in accordance with Rule R311-201 shall must:

(a) display the certificate upon request;

(b) comply with all local, state, and federal laws, rules, and regulations regarding the UST activity for which certification is granted;

(c) report the discovery of any release caused by or encountered in the course of performing the UST activity for which certification is granted to the ~~Director~~director, the local health district, and the local public safety office within ~~twenty-four~~24 hours.

(i) ~~Certified~~certified UST consultants and certified groundwater and soil samplers shall must report the discovery of any release caused by or encountered in the course of performing environmental media sampling for compliance with Utah UST rules, or report the results indicating that a release may have occurred, to the ~~Director~~director, the local health district, and the local public safety office within ~~twenty-four~~24 hours.

(d) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and

(e) ~~shall~~not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(2) The director may audit or commission and audit of records which support eligibility for certification, or performance of work for which certification is granted, at any time.

(a) audits may be determined by random selection or for specific reasons, including suspicion or discovery of inaccuracies on an application for certification or performance of substandard work for which certification is granted, or deficiencies in complying with regulations.

(~~2~~3) Certified individuals ~~shall~~must, in addition to meeting the performance standards in Subsection R311-201-6, ~~observe~~comply with the following:

(a) ~~Certified~~certified UST ~~Consultant~~consultant. An individual who provides UST consulting services in the State of Utah must:

(i) ~~shall~~provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(ii) ~~shall~~perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(iii) ~~shall~~perform work and submit documentation in a timely manner;

(iv) ~~shall~~review and certify by signature any documentation submitted to the ~~Director~~director in accordance with UST release-related compliance; and

(v) ~~shall~~ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a ~~Certified~~certified UST ~~Consultant~~consultant.

(b) UST ~~Inspector~~inspector. An individual who performs ~~underground storage tank~~UST inspecting for the Division of Environmental Response and Remediation shall:

(i) ~~shall~~conduct inspections of USTs and records to determine compliance with this rule only as authorized by the ~~Director~~director.

(c) UST ~~Tester~~tester. An individual who performs UST testing in the State of Utah must:

(i) ~~shall~~perform all work in a manner that ~~there is no~~does not cause a release of the contents of the tank;

(ii) ~~shall~~assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment ~~shall be~~are supervised by a certified person; and

(iii) ~~shall~~perform work in a manner that the integrity of the ~~underground storage tank~~UST system is maintained.

(d) UST ~~Installer~~installer. An individual who performs ~~underground storage tank~~UST installation or repair in the State of Utah must:

(i) be certified to assure the proper installation of all elements of UST systems which are critical to the integrity of the system and to the protection of the environment, including:

(~~i~~)A) ~~shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment, including~~pre-installation tank testing;

(B) tank site preparation including anchoring, tank placement, and backfilling;

(C) cathodic protection installation, service, or repair;

(D) vent and product piping assembly;

(E) fill tube attachment;

(F) installation of tank manholes, ~~pump installation~~;

(H) secondary containment construction, ~~and UST repair, shall be supervised by a certified person~~; and

(ii) ~~shall~~notify the ~~Director~~director as required by R311-203-~~3~~4 before installing or upgrading an UST.

(e) UST ~~Remover~~remover. An individual who performs ~~underground storage tank~~UST removal in the State of Utah must:

(i) ~~shall~~assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes:

- ~~\_\_\_\_\_~~ (A) removal of soil adjacent to the tank[~~7~~];
- ~~\_\_\_\_\_~~ (B) disassembly of pipe[~~7~~];
- ~~\_\_\_\_\_~~ (C) final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site [~~shall~~]~~must~~ be supervised by a certified person; and
- (ii) [~~shall~~]-not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(~~b~~2).

**R311-201-7. Denial of Certification and Appeal of Denial.**

- (1) Any individual whose application or renewal application for certification or certification renewal is denied [~~shall~~]~~will~~ be provided with a written documentation by the [~~Director~~]~~director~~ specifying the reason or reasons for denial.
- (a) [~~An~~]~~an~~ applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

**R311-201-8. Inactivation of Certification.**

- (1) If an applicant was certified based upon [~~his~~]~~their~~ employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer.
- (2) If the employer loses [~~his~~]~~their~~ financial assurance or the applicant leaves the employer, [~~his certificate shall~~]~~their certification will~~ automatically be deemed inactive and [~~he shall~~]~~they will~~ no longer be certified for purposes of this [~~Rule~~]~~rule~~.
- (3) Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees.
- (4) Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

**R311-201-9. Revocation of Certification.**

- (1) Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4[~~3~~] or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked.
- (a) [~~Procedures~~]~~procedures~~ for revocation are specified in Rule R305-7.

**R311-201-10. Reciprocity.**

- (1) If the [~~Director~~]~~director~~ determines that another state's certification program is equivalent to the certification program [~~provided~~]~~referred to~~ in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, [~~he~~]~~the director~~ may issue a Utah certificate.
- (a) The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-3[~~4~~](~~e~~3), [~~as appropriate,~~]~~]~~whichever [~~is~~]~~occurs~~ first.

**R311-201-12. UST Operator Training and Registration.**

- (1) To meet the [~~Operator Training~~]~~operator training~~ requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility [~~shall~~]~~must~~ have UST facility operators that are trained and registered according to the requirements of this section.

- (2) Each facility [~~shall~~]~~must~~ have three classes of operators: A, B, and C.

- (a) [~~A~~]~~a~~ facility may have more than one person designated for each operator class.
- (b) [~~An~~]~~an~~ individual acting as a Class A or B operator may do so for more than one facility.
- (~~2~~3) The UST owner or operator [~~shall~~]~~must~~ provide documentation to the [~~Director~~]~~director~~ to identify the Class A, B, and C operators for each facility.

- (a) [~~If~~]~~if~~ an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules, and regulations.

- (~~3~~4) New Class A and B operators [~~shall~~]~~must~~ be trained and registered within 30 days of assuming responsibility for an UST facility.

- (5) New Class C operators [~~shall~~]~~must~~ be trained before assuming the responsibilities of a Class C operator.

- (~~4~~6) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(~~d~~6)(~~2~~b).

- (a) [~~The~~]~~the~~ Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

- [~~\_\_\_\_\_~~]~~(a)~~ The Class A operator [~~shall~~]~~must~~:
  - (i) have a general knowledge of UST systems;
  - (ii) ensure that UST records are properly maintained according to 40 CFR 280;
  - (iii) ensure that yearly UST fees are paid;
  - (iv) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;
  - (v) make financial responsibility documents available to the [~~Director~~]~~director~~ as required; and
  - (vi) ensure that Class B and Class C operators are trained and registered.

- (b) [~~An~~]~~an~~ owner or operator may designate a third[-]party Class B operator as a Class A operator if:

- (i) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;
- (ii) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and
- (iii) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

- (~~5~~7) The Class B operator [~~shall~~]~~must~~ implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems.

- (a) [~~The~~]~~the~~ Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator [~~shall~~]~~must~~:

- (~~a~~i) ensure that on[-]site UST operator inspections are conducted according to the requirements of Section R311-203-7;
- (~~b~~ii) ensure that UST release detection is performed according to 40 CFR 280 subpart D;
- (~~e~~iii) ensure that the status of the UST system is monitored for alarms and unusual operating conditions that may indicate a release;
- (~~d~~iv) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(~~e~~7)(~~3~~iii), if it is not reported as a suspected release according to 40 CFR 280.50;



(~~e~~v) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(~~f~~vi) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(~~g~~vii) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(~~h~~viii) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(~~i~~ix) ensure that Class C operators are trained and registered, and are on[-]site during operating hours.

(~~6~~8) Any individual providing services as a third-party Class B operator ~~shall~~ must be trained and registered in accordance with Subsection R311-201-12(~~h~~10) and ~~shall~~ must:

(a) be certified in accordance with Rule R311-201 as:

(i) a UST [~~Tester~~] tester; or

(ii) a UST installer as either a general installer or a service[~~r~~] or repair technician[~~s~~]; or

(b) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(~~7~~9) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator ~~shall~~ must:

(a) be present at the facility at all times during normal operating hours;

(b) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(c) properly respond to alarms, spills, and overfills;

(d) notify Class A operators, [~~and/or~~] Class B operators, or both, and appropriate emergency responders when necessary; and

(e) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(~~8~~10) Operator [~~Training~~] training and [~~Registration~~] registration.

(a) [~~Training~~] training and testing.

(i) [~~Applicants~~] applicants for Class A and B operator registration ~~shall~~ must successfully complete an approved operator training course within the six-month period prior to application.

(ii) [~~The~~] the training course ~~shall~~ must be approved by the [~~Director~~] director, and shall include instruction in the following:

(A) notification[~~s~~];

(B) temporary and permanent closure[~~s~~];

(C) installation permitting[~~s~~];

(D) [~~underground tank~~] UST requirements of the 2005 Energy Policy Act[~~s~~];

(E) Class A, B, and C operator responsibilities[~~s~~];

(F) spill prevention[~~s~~];

(G) overfill prevention[~~s~~];

(H) UST release detection[~~s~~];

(I) corrosion protection[~~s~~];

(J) record-keeping requirements[~~s~~];

(K) emergency response[~~s~~];

(L) product compatibility[~~s~~];

(M) Utah UST rules and regulations[~~s~~];

(N) UST financial responsibility[~~s~~]; and

(O) delivery prohibition.

(iii) [~~Applicants~~] applicants for Class A and B operator registration ~~shall~~ must successfully pass a registration examination authorized by the [~~Director~~] director.

(A) [~~The Director~~] the director shall determine the content of the examination.

(iv) [~~An~~] an individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(~~h~~10)(~~4~~a)(~~A~~i) and R311-201-12(10)(a)(~~E~~iii) by completing the following within the six-month period prior to application:

(A) successfully passing a nationally recognized UST operator examination approved by the [~~Director~~] director; and

(B) successfully passing a Utah UST rules and regulations examination authorized by the [~~Director~~] director.

(v) [~~The Director~~] the director shall determine the content of the examination.

(~~v~~vi) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(b) [~~Registration~~] registration application.

(i) [~~Applicants~~] applicants for Class A and B operator registration ~~shall~~ must:

(A) submit a registration application to the [~~Director~~] director;

(B) [~~shall~~] document proper training[~~s~~]; and

(C) [~~shall~~] pay any applicable fees.

(ii) Class C operators shall be designated by a Class B operator.

(iii) [~~The~~] the Class B operator ~~shall~~ must maintain a list identifying the Class C operators for each UST facility. The list ~~shall~~ must identify:

(A) each Class C operator[~~s~~];

(B) the date of training[~~s~~]; and

(C) the trainer.

(iv) [~~Identification~~] identification on the list ~~shall~~ serve serves as the operator registration for Class C operators.

(~~v~~v) [~~A~~] a registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(~~v~~vi) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.

(~~9~~c) [~~Renewal~~] renewal of registration.

(~~a~~i) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(~~i~~A) submitting a completed application form;

(~~ii~~B) paying any applicable fees; and

(~~iii~~C) documenting successful completion of any re-training required by Subsection R311-201-12(~~i~~10)(d).

(~~b~~ii) [~~If~~] if the [~~Director~~] director determines that the operator meets all the requirements for registration, the [~~Director~~] director shall renew the applicant's registration for a period equal to the initial registration.

(~~e~~iii) [~~Any~~] any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application ~~shall~~ must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(~~h~~10)(~~4~~a) before receiving the renewal registration.

(d) [~~Re-training~~] re-training.

(i) [~~A~~] a Class A operator ~~shall be~~ is subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

NOTICES OF PROPOSED RULES

(~~(#)A~~) lapsing of certificate of compliance;  
 (~~(#)B~~) failure to provide acceptable financial responsibility; or  
 (~~(#)C~~) failure to ensure that Class B and C operators are trained and registered.

(~~(e)ii~~) ~~(A)a~~ Class B operator ~~[shall be]~~is subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(~~(i)A~~) failure to document ~~[significant operational]~~ compliance, as determined by the ~~[EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1)]~~ Technical Compliance Rate;

(I) Technical Compliance Rate is determined using the EPA "UST and LUST Performance Definitions as of October 2018" and incorporated herein by reference.

(~~(#)B~~) failure to perform UST operator inspections required by Section R311-203-7; or

(~~(#)C~~) failure to ensure that Class C operators are trained and registered, and are on[-]site during operating hours.

(~~(f)iii~~) ~~[To]~~to be re-trained, Class A and Class B operators ~~[shall]~~must successfully complete the appropriate Class A or B operator training course and examination, or ~~[shall]~~must complete an equivalent re-training course and examination approved by the ~~[Director]~~director.

(~~(g)iv~~) Class A and B operators ~~[shall]~~must be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the ~~[Director]~~director within 30 days of the re-training.

(A) ~~(H)~~if the documentation is not received by the ~~[Director]~~director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse.

(B) ~~(T)~~to re-register, the operator shall meet the requirements of Subsection R311-201-12(~~(h)10~~)(~~(+)a~~) and R311-201-12(10)(~~(2)b~~).

(~~(h)v~~) ~~(H)~~if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(10)(~~(+)d~~)(~~(+)j~~) or R311-201-12(10)(d) (~~(2)ii~~), re-training ~~[shall not be]~~is not required if the Class A or B operator successfully completes and documents re-training under ~~[Subsections]~~Subsection R311-201-12(~~(+)10~~)(~~(3)d~~) ~~[and (4)]~~for a prior determination of non-compliance that occurred during the previous nine months.

(~~(+0)11~~) Reciprocity.

(a) ~~(H)~~if the ~~[Director]~~director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(i) submits a completed application form;

(ii) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(~~(h)10~~)(~~(+)a~~)(~~(D)iv~~)(~~(#)B~~); and

(iii) submits payment of any applicable registration fees.

(b) ~~(The)~~the Class A or Class B registration ~~[shall be]~~is valid until the Utah registration expiration described in Subsection R311-201-12(~~(h)10~~)(~~(2)b~~)(~~(D)vi~~).

**KEY: hazardous substances, administrative proceedings, underground storage tanks, petroleum storage tanks, revocation procedures**

**Date of Enactment or Last Substantive Amendment: 2021[January 1, 2017]**

Notice of Continuation: March 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-203	Filing ID 53580

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R311-203. Underground Storage Tanks: Technical Standards
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Clarifies that an installation permit fee will increase based on additional number of tanks being installed under that permit.
Removes the "EPA Significant Operational Compliance" document and update rules to reflect the current "EPA Technical Compliance Rate" document, which was developed for owner/operators to use to comply with rules enacted in 2018.
Updates requirements for reporting overfill testing results, automatic tank gauges, and line leak detectors on PEI RP-1200 forms. This will provide consistency in reporting test results, but still allow some latitude to develop or use different forms as approved by the director.

Changes the title "responsible person" to "trained operator" and clarifies that it is the trained operator that is responsible person on site.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The change to Subsection R311-203-3(5) clarifies that the installation permit fee will increase based on additional number of tanks being installed under that permit.

The change to Subsection R311-203-4(6) updates the reference to current "EPA Technical Compliance Rate".

The change to Subsection R311-203-5(7) certifies individuals who test overfill, automatic tank gauges, and line leak detectors must use the forms found in PEI RP1200 appendices or other forms approved by the director.

The changes to Subsection R311-203-8(1) change the title "responsible person" to "trained operator" and clarifies that it is the trained operator that is responsible person on site.

The change updates this rule and ACT references, as applicable.

The change updates punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not change the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The change to Subsection R311-203-3 (5) is not expected to have any fiscal impact on state government revenues or expenditures related to -owned underground storage tanks (USTs) because this is a clarification and the installation permit fees are currently being collected this way.

In Subsection R311-203-4(6), rules enacted in 2018 affect the Technical Compliance Rate and as facilities work to meet that compliance standard, more may be out of compliance than would have been under the former standard (SOC) guidelines. The obligation to maintain compliance already exists for owner/operators. In general, the operates and maintains its USTs in compliance with these regulations, therefore no significant impact is anticipated. If the state changes their compliance practices so that they were out of compliance for 6 months or more, it will cost them an additional \$190 in UST registration fees per tank. Since the Division of Environmental Response and Remediation (Division) cannot predict behavior, the actual cost to the state is inestimable.

The change to Subsection R311-203-5(7) is not expected to have any fiscal impact on state government revenues or expenditures because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals already use these forms. Additionally, this rule allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

**B) Local governments:**

The change to Subsection R311-203-3 (5) is not expected to have any fiscal impact on local governments' revenues or expenditures related to local government-owned USTs, because this is a clarification and the installation permit fees are currently being collected this way.

In Subsection R311-203-4(6), rules enacted in 2018 affect the Technical Compliance Rate and as facilities work to meet that compliance standard, more may be out of compliance than would have been under the former standard (SOC) guidelines. The obligation to maintain compliance already exists for owner/operators. In general, local governments operate and maintain their USTs in compliance with these regulations, therefore no significant impact is anticipated. If local governments change their compliance practices so that they were out of compliance for 6 months or more, it will cost them an additional \$190 in UST registration fees per tank. Since the Division cannot predict behavior, the actual cost to local governments is inestimable.

The change to Subsection R311-203-5(7) is not expected to have any fiscal impact on local governments' revenues or expenditures related to local government-owned USTs, because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals already use these forms. Additionally, this rule allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

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

The change to Subsection R311-203-3 (5) is not expected to have any fiscal impact on small businesses' revenues or expenditures because this is a clarification and the installation permit fees are currently being collected this way.

In Subsection R311-203-4(6), rules enacted in 2018 affect the Technical Compliance Rate and as facilities work to meet that compliance standard, more may be out of compliance than would have been under the former standard (SOC) guidelines. By choosing to be out of compliance, they choose to pay a higher fee. For small business-owned tanks with a 6-month period of non-compliance, it would cost the small businesses \$190 in

UST registration fees per tank for the USTs on the PST fund and \$80 per tank for those businesses with an alternate form of financial assurance. This higher rate is already charged to UST owners and operators and the Division doesn't anticipate a change in the number of facilities to be charged this fee and the Division is willing to work with owners and operators of these facilities to reach compliance. For three years the Division has delayed making a change to this definition, to allow businesses time to come into compliance with previously adopted legislation. Since the Division cannot predict behavior, the actual cost to small businesses is inestimable.

The change to Subsection R311-203-5(7) is not expected to have any fiscal impact on small businesses' revenues or expenditures related to small business-owned USTs, because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals already use these forms. Additionally, this rule allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

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

The change to Subsection R311-203-3 (5) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures related to non-small business-owned USTs, because this is a clarification and the installation permit fees are currently being collected this way.

In Subsection R311-203-4(6), the rules enacted in 2018 affect the Technical Compliance Rate and as facilities work to meet that compliance standard, more may be out of compliance than would have been under the former standard (SOC) guidelines. By choosing to be out of compliance, they choose to pay a higher fee. For non-small business-owned tanks with a 6-month period of non-compliance, it would cost the non-small businesses \$190 in UST registration fees per tank for the USTs on the PST fund and \$80 per tank for those businesses with an alternate form of financial assurance. This higher rate is already charged to UST owners and operators and the Division doesn't anticipate a change in the number of facilities to be charged this fee and the Division is willing to work with owners and operators of these facilities to reach compliance. For three years the Division delayed making a change to this definition, to allow businesses time to come into compliance with previously adopted legislation. Since the Division cannot predict behavior, the actual cost to non-small businesses is inestimable.

The change to Subsection R311-203-5(7) is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures related to non-small business owned USTs, because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals already use these forms. Additionally, this rule allows for

an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

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

The change to Subsection R311-203-3 (5) is not expected to have any fiscal impact on other persons' revenues or expenditures related to persons who own USTs, because this is a clarification and the installation permit fees are currently being collected this way

In Subsection R311-203-4(6), the rules enacted in 2018 affect the Technical Compliance Rate and as facilities work to meet that compliance standard, more may be out of compliance than would have been under the former standard (SOC) guidelines. By choosing to be out of compliance they choose to pay a higher fee. For persons who own tanks with a 6-month period of non-compliance, it would cost the person \$190 in UST registration fees per tank for the USTs on the PST fund and \$80 per tank for those persons with an alternate form of financial assurance. This higher rate is already charged to UST owners and operators and the Division doesn't anticipate a change in the number of facilities to be charged this fee and the Division is willing to work with owners and operators of these facilities to reach compliance. Since the Division cannot predict behavior, the actual cost to other persons is inestimable.

The change to Subsection R311-203-5(7) is not expected to have any fiscal impact on other persons' revenues or expenditures related to other person-owned USTs, because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals already use these forms. Additionally, this rule allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Only those who choose to not come back into compliance within six months will be affected. Based on improved compliance rates over the past three years, it is anticipated that the number of facilities subject to this fee will be similar to the number subject to it under the prior definition.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There would not be a direct fiscal cost imposed by this rule because the obligation to maintain compliance already exists for owners and operators, and the higher rate is already charged to owners and operators with a six months period of non-compliance. Kim Shelley, Executive Director

Underground storage tank testing forms are free and available to certified individuals. Additionally, this rule allows for an alternative form to be submitted if approved by the director.

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelly, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-408	Section 19-6-403
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

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

On:	At:	At:
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-203. Underground Storage Tanks: Technical Standards. R311-203-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-203-2. Notification.**

(1) The owner or operator of an ~~underground storage tank~~ UST ~~shall~~ must notify the ~~Director~~ director whenever:

- (a) new USTs are brought into use;
- (b) the owner or operator changes;
- (c) changes are made to the tank or piping system; and
- (d) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded.

(2) All notifications ~~shall~~ must be submitted on the current approved notification form.

(3) Notifications submitted to meet the requirements of ~~Subsection R311-203-2(a)(1) through (4)~~ shall be submitted within 30 days of the completion of the work or the change of ownership.

(4) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

- (a) complete the appropriate section of the ~~notification~~ form to be submitted by the owner or operator, and ensure that the

NOTICES OF PROPOSED RULES

notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(b) provide separate notification to the ~~Director~~director within 60 days of the completion of the installation.

**R311-203-3. New Installations, Permits.**

(1) Certified UST installers ~~shall~~must notify the ~~Director~~director at least 10 days, or another time period approved by the ~~Director~~director, before commencing any of the following activities:

- (a) the installation of a full UST system or tank only;
- (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (c) the internal lining of a previously-existing tank;
- (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
- (e) the installation of a bladder in a tank;
- (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
- (g) the installation of a spill prevention or overflow prevention device;
- (h) the installation of a leak detection monitoring system; ~~and~~or
- (i) the installation of a containment sump or under-dispenser containment.

(2) The UST installation company ~~shall~~must submit to the ~~Director~~director an UST installation permit fee of \$200 when any of the activities listed in Subsection R311-203-3(a)(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(3) The fees assessed under Subsection 19-6-411(2)(a)(i) ~~shall~~will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.

~~(a) Installations~~installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(e) is charged shall count toward the total installations for the 12-month period.

(4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation ~~shall be~~is considered complete when:

- (a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or
- (b) in the case of installation of the components listed in Subsections R311-203-3(a)(1)(d) through R311-203-3(a)(f), the new installation is functional and the UST holds a regulated substance and is operational.

(5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the ~~Director~~director of the change.

~~(a) When~~when additions are made, the UST installation permit fee shall ~~not be~~be increased ~~[unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined]~~based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.

(6) The number of UST installation companies performing work on a particular installation ~~shall~~will not be a factor in determining the UST installation permit fee for that installation.

~~(a) However,~~each installation company ~~shall identify itself at the time the UST installation permit fee is paid]~~must be identified on the UST installation permit.

(7) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator ~~shall~~must submit to the ~~Director~~director an as-built drawing~~[, to scale,]~~ that meets the requirements of Subsection R311-200-1(b)(2).

**R311-203-4. Underground Storage Tank Registration Fee.**

(1) Registration fees ~~shall~~will be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and ~~shall~~will be billed per facility.

(2) Registration fees ~~shall be~~are due on July 1 of the fiscal year for which the assessment is made, or, for ~~underground storage tanks~~USTs brought into use after the beginning of the fiscal year, ~~underground storage tank~~UST registration fees ~~shall be~~are due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(3) The ~~Director~~director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the ~~Director~~director.

(4) The ~~Director~~director shall issue a certificate of registration to owners or operators for individual ~~underground storage tanks~~USTs at a facility if:

- (a) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and
- (b) the ~~underground storage tank~~UST registration fee has been paid.

(5) Pursuant to Subsection 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the ~~Director~~director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

~~(a) However,~~the ~~Director~~director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the ~~underground storage tanks~~USTs within one year of becoming the new owner or operator of the facility.

(6) ~~[An underground storage tank]~~A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of ~~[significant operational]~~compliance with ~~leak prevention or leak detection requirements]~~the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

~~(a) The~~the higher registration fee ~~shall be~~is due July 1 following the documented six-month period of non-compliance.~~[A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).]~~

(7) When the ~~Director~~director is notified of the existence of a previously un-registered regulated UST, the ~~Director~~director shall assess the registration fee for the current fiscal year.

~~(a) If~~if the UST is properly permanently closed within 90 days of the notification of the existence of the UST, the ~~Director~~director may decline active collection of past-due

registration fees, late payment penalties, and interest for previous fiscal years.

### R311-203-5. UST Testing Requirements.

(1) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances.

         (a) ~~[Tanks]~~tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(2) Spill prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) ~~[shall]~~must report the test results using:

         (a) the form "Utah Spill Prevention Test"<sup>[7]</sup>; or

         (b) the form "Appendix C-3 Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method", found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"<sup>[7]</sup>; or

         (c) another form approved by the ~~[Director]~~director.

(3) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of Section R311-206-11 ~~[shall]~~must report the test results using:

         (a) the form "Utah Containment Sump Test"<sup>[7]</sup>; or

         (b) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method", found in PEI RP1200<sup>[7]</sup>; or

         (c) another form approved by the ~~[Director]~~director.

(4) When a sump sensor is used as an automatic line leak detector, the secondary containment sump ~~[shall]~~must be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the ~~[Director]~~director.

         (a) ~~[The]~~the sensor shall be located as close as is practicable to the lowest portion of the sump.

(5) Cathodic protection testing. Cathodic protection tests ~~[shall]~~must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the ~~[Director]~~director. The tester who performs the test ~~[shall]~~must provide the following information:

         (a) location of at least three test points per tank<sup>[7]</sup>;

         (b) location of one remote test point for galvanic systems<sup>[7]</sup>;

         (c) test results in volts or millivolts<sup>[7]</sup>;

         (d) pass/fail determination for each tank, line, flex connector, or other UST system component tested<sup>[7]</sup>;

         (e) the criteria by which the pass/fail determination is made<sup>[7]</sup>; and

         (f) a site plat showing locations of test points.

         (g) ~~[A]~~a re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(6) UST testers performing tank and line tightness testing ~~[shall]~~must include the following as part of the test report:

         (a) pass/fail determination for each tank or line tested,

         (b) ~~[the]~~measured leak rate<sup>[7]</sup>;

         (c) ~~[the]~~test duration<sup>[7]</sup>;

         (d) ~~[the]~~product level for tank tests<sup>[7]</sup>;

         (e) ~~[the]~~pressure used for pressure tests<sup>[7]</sup>;

         (f) ~~[the]~~type of test<sup>[7]</sup>; and

         (g) ~~[the]~~test equipment used.

         (7) overfill prevention equipment inspection. An individual who conducts an inspection of overfill prevention equipment to meet the requirements of 40 CFR 280.35(a)(2) must report the results using:

         (a) the form "Appendix C-5 UST Overfill Equipment Inspection Automatic Shutoff Device and Ball Float Valve", found in PEI RP1200, when the overfill prevention is provided by either an automatic shutoff device or a ball float valve;

         (b) the form "Appendix C-6 Overfill Alarm Operation Inspection", found in PEI RP1200, when overfill prevention is provided by an overfill alarm; or

         (c) another form approved by the director.

         (8) Automatic tank gauge inspection. An individual who conducts an inspection of automatic tank gauges to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

         (a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection", found in PEI RP1200, and if the UST system or any portion thereof is interstitially monitored, "Appendix C-8: Liquid Sensor Functionality Testing", found in PEI RP1200; or

         (b) another form approved by the director.

         (9) Automatic line leak detector testing. An individual who conducts a test of automatic line leak detectors to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

         (a) the form "Appendix C-9 Mechanical and Electronic Line Leak Detector Performance Tests", found in PEI RP1200; or

         (b) another form approved by the director.

### R311-203-6. Secondary Containment and Under-Dispenser Containment.

(1) Secondary containment for tanks and piping.

(a) ~~[To]~~to meet the requirements of ~~[Section]~~Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an ~~[underground storage tank]~~UST system after October 1, 2008 and before January 1, 2017 ~~[shall]~~must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) ~~[The]~~the secondary containment installed under Subsection R311-203-6(~~[a]~~1) ~~[shall]~~must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.

         (i) ~~[Monthly]~~monthly monitoring ~~[shall]~~must meet the requirements of 40 CFR 280.43(g).

(c) ~~[Containment]~~containment sumps for piping ~~[that is]~~installed under Subsection R311-203-6(~~[a]~~1) ~~[shall be]~~are required:

         (i) at the submersible pump or other location where the piping connects to the tank;

         (ii) where the piping connects to a dispenser, or otherwise goes above~~[-]~~ground; and

         (iii) where double-walled piping that is required under Subsection R311-203-6(~~[a]~~1) connects with existing piping.

(d) ~~[Containment]~~containment sumps for piping that is installed under Subsection R311-203-6(~~[a]~~1) ~~[shall]~~must:

         (i) contain submersible pumps, check valves, unburred risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

         (ii) meet the requirements of Subsections R311-203-6(~~[b]~~2)(~~[2]~~b)(~~(A)~~through(~~C~~C).

         (e) ~~[In]~~in the case of a replacement of tank or piping, only the portion of the UST system being replaced ~~[shall be]~~is subject to the requirements of Subsection R311-203-6(~~[a]~~1).

(i) ~~If~~ if less than 100 ~~percent~~% of the piping from a tank to a dispenser is replaced, the requirements of Subsection R311-203-6(a)1 ~~shall apply~~ applies to all new product piping that is installed.

(ii) ~~The~~ the closure requirements of Rule R311-205 ~~shall~~ apply to all product piping that is taken out of service.

(iii) ~~When~~ when new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping ~~shall~~ must be secondarily contained, and ~~shall be~~ monitored for releases according to 40 CFR 280.43(g).

(f) ~~The~~ the requirements of Subsection R311-203-6(a)1 ~~shall~~ do not apply to:

(i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)~~(i) through (v)~~; or

(ii) piping that connects two or more tanks to create a siphon system.

(g) ~~The~~ the requirements of Subsection R311-203-6(a)1 ~~shall~~ apply to emergency generator USTs installed after October 1, 2008.

(2) Under-dispenser containment.

(a) ~~To~~ to meet the requirements of ~~Section~~ Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an ~~underground storage tank~~ UST, ~~shall~~ must have under-dispenser containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) ~~The~~ the under-dispenser containment ~~shall~~ must:

(i) be liquid-tight on its sides, bottom, and at all penetrations;

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system, or ~~shall~~ be continuously monitored for the presence of liquids.

(c) ~~If~~ if an existing dispenser is replaced, the requirements of Subsection R311-203-6(b)2 ~~shall~~ apply to the new dispenser if any equipment used to connect the dispenser to the ~~underground storage tank~~ UST system is replaced.

(i) ~~This~~ this equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(3) The requirements of Subsections R311-203-6(a)1 and R311-203-6(b)2 ~~shall~~ do not apply if the installation is located more than 1,000 feet from an existing community water system or an existing potable drinking water well.

(a) ~~The~~ the UST owner or operator ~~shall~~ must provide to the ~~Director~~ director documentation to show that the requirements of Subsections R311-203-6(a)1 and R311-203-6(b)2 ~~do~~ do not apply to the installation.

(b) ~~The~~ the documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(i) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1,000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility~~;~~; and

(ii) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections R311-203-6(a)1 and R311-203-6(b)2.

(4) To determine whether the requirements of Subsections R311-203-6(a)1 and R311-203-6(b)2 apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new ~~underground tank~~ UST, piping, or motor fuel dispenser system to:

(a) the closest part of the nearest community water system, including:

(i) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(ii) water lines, processing tanks, and water storage tanks; and

(iii) water distribution/service lines under the control of the community water system operator, or

(b) the wellhead of the nearest existing potable drinking water well.

(5) If a new ~~underground storage tank~~ UST facility is installed, and is not within 1,000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections R311-203-6(a)1 and R311-203-6(b)2 apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the ~~underground tanks~~ UST, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(6) To meet the requirements of 40 CFR 280.20, all tanks and product piping that are installed or replaced as part of an ~~underground storage tank~~ UST system on or after January 1, 2017 ~~shall~~ must be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

**R311-203-7. Operator Inspections.**

(1) Owners and operators ~~shall~~ must perform periodic inspections in accordance with 40 CFR 280.36.

~~Inspections~~ inspections ~~shall~~ must be conducted by or under the direction of the designated Class B operator.

(b) ~~The~~ the Class B operator ~~shall~~ must ensure that documentation of each inspection is kept and made available for review by the ~~Director~~ director.

(2) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or 208.36(a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the ~~Director~~ director.

(3) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and Section R311-204-4 ~~shall~~ must have an annual operator inspection.

(4) An owner or operator who conducts visual checks of tank top containment sumps and under dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) ~~shall~~ must conduct the visual checks monthly and report the results on the operator inspection form.

**R311-203-8. Unattended Facilities.**

(1) A facility that:

(a) normally has no employee on site or ~~other responsible person on site~~, or ~~is~~ open to dispense fuel at times when no employee or ~~responsible person~~ trained operator is on site~~;~~ must have:

(a) i a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders~~;~~; and

(b) ii an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.



**KEY:** fees, hazardous substances, petroleum, underground storage tanks  
**Date of Enactment or Last Substantive Amendment:** ~~2021~~ **January 3, 2017**  
**Notice of Continuation:** March 27, 2017  
**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-403; 19-6-408

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-204	Filing ID 53581

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-204. Underground Storage Tanks: Closure and Remediation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Removes redundancies regarding tank disposal.
Clarifies that the 72-hour notification requirement means three business days.
Changes the labeling requirement for tank disposal to indicate "substance contained" instead of "contained petroleum" because substances other than petroleum are also regulated.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The change to Subsection R311-204-2(3) removes "tank disposal" from list of items addressed in closure plan because it's addressed in Section R311-204-3.

The change to Subsection R311-204-2(8) clarifies that the 72-hour notification requirement means three business days.

The change to Subsection R311-204-3(1) changes "contained petroleum" to "substance contained" because the tank may have contained a non-petroleum product that would be regulated by the UST program.

All other changes are updating punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

**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 any fiscal impact on other persons revenues or expenditures because all proposed changes are minor corrections and clarifications.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

No compliance costs are anticipated to affected persons because all proposed changes are minor corrections and clarifications.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are minor corrections and clarifications. Kim Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	Section 19-6-402
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

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

<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-204. Underground Storage Tanks: Closure and Remediation.**

**R311-204-1. Definitions.**

Definitions are found in Section R311-200.

**R311-204-2. Underground Storage Tank Closure Plan.**

(1) Owners or operators of all ~~underground storage tanks~~ USTs or any portion thereof which are to be permanently closed or undergo change-in-service ~~shall~~ must submit a permanent closure plan to the ~~Director~~ director.

(a) ~~The~~ the permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(2) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(3) The closure plan shall address applicable issues involved with permanent closure or change-in-service, including: ~~tank disposal handling and final disposal site,~~

- ~~(a)~~ product removal~~;~~;
- ~~(b)~~ sludge disposal~~;~~;
- ~~(c)~~ vapor purging or inerting~~;~~;
- ~~(d)~~ removing or securing and capping product piping~~;~~;
- ~~(e)~~ removing vent lines or securing vent lines open~~;~~;
- ~~(f)~~ tank cleaning~~;~~;
- ~~(g)~~ environmental sampling~~;~~;
- ~~(h)~~ contaminated soil and water management~~;~~;
- ~~(i)~~ in-place tank disposal or tank removal~~;~~;
- ~~(j)~~ transportation of tank~~;~~;
- ~~(k)~~ permanent disposal; and
- ~~(l)~~ other disposal activities which may affect human health, human safety, or the environment.

(4) No ~~underground storage tank~~ UST shall be permanently closed or undergo change-in-service prior to the owner or operator receiving final approval of the submitted permanent tank closure plan by the ~~Director~~ director, except as outlined in Subsection R311-204-2(b).

(a) ~~Closure~~ closure plan approval ~~shall be~~ is effective for a period of one year.

(b) ~~If~~ if the ~~underground storage tank~~ UST has not been permanently closed or undergone change in service as proposed within one year following approval from the ~~Director~~ director, the plan must be re-submitted for approval, unless otherwise approved by the ~~Director~~ director.

(5) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the ~~Director~~ director.

(6) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during all closure activities.

(7) Any deviation from or modification to an approved closure plan must be approved by the ~~Director~~ director prior to implementation, and must be submitted in writing to the ~~Director~~ director.

(8) The ~~Director~~ director ~~shall~~ must be notified at least ~~72 hours~~ three business days prior to the start of closure activities.

**R311-204-3. Disposal.**

(1) Tank labeling. Immediately after being removed, all tanks which are permanently closed by removal must be labeled with the following in letters at least two inches high:

- (a) the facility identification number~~, and~~;
- (b) ~~"contained petroleum, removed: month/day/year".~~ the substance contained; and
- (c) the date removed: "month/day/year".

(2) Removed tanks shall be expeditiously disposed of as regulated ~~underground storage tanks~~ USTs by the following methods:

(a) ~~The~~ the tank may be cut up after the interior atmosphere is first purged or inerted.

(b) ~~The~~ the tank may be crushed after the interior atmosphere is first purged or inerted.

(c) ~~The~~ the tank may not be used to store food or liquid intended for human or animal consumption.

(d) ~~The~~ the tank may be disposed of in a manner approved by the ~~Director~~ director.

(3) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

**R311-204-4. Closure Notice.**

(1) Owners or operators of ~~underground storage tanks~~ USTs which were permanently closed or had a change-in-service prior to December 22, 1988 ~~shall~~ must submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(2) Owners or operators of ~~underground storage tanks~~ USTs which are permanently closed or have a change-in-service after December 22, 1988 ~~shall~~ must submit a completed closure notice form and the following information within 90 days after tank closure:

(a) ~~All~~ all results from the closure site assessment conducted in accordance with ~~Section~~ Rule R311-205, including analytical laboratory results and chain of custody forms~~;~~ and

(b) ~~Effective~~ effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include:

- ~~(i)~~ scale~~;~~;
- ~~(ii)~~ north arrow~~;~~;
- ~~(iii)~~ streets~~;~~;
- ~~(iv)~~ property boundaries~~;~~;
- ~~(v)~~ building structures~~;~~;
- ~~(vi)~~ utilities~~;~~;
- ~~(vii)~~ ~~underground storage tank~~ UST system location~~;~~;
- ~~(viii)~~ location of any contamination observed or suspected during sampling~~;~~;
- ~~(ix)~~ location and volume of any stockpiled soil~~;~~;
- ~~(x)~~ the extent of the excavation zone~~;~~ and
- ~~(xi)~~ any other relevant features.

(c) ~~All~~ all sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(3) Owners and operators of ~~underground storage tanks~~ USTs that are temporarily closed for a period greater than three months ~~shall~~ must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(4) All closure notices for permanent and temporary closure shall be submitted on the current approved forms.

**R311-204-5. Remediation.**

(1) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a ~~Certified~~ certified UST ~~Consultant~~ consultant, except as outlined in ~~sections~~ Subsections

NOTICES OF PROPOSED RULES

19-6-402(6)(b)(i), ~~19-6-402(6)(b)(ii)~~, R-311-201-2(a), and R311-204-5(b)(2).

(2) At the time of UST closure, a certified UST ~~Remover~~remover may over-excavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the ~~Director~~director, in addition to the minimum amount required for closure of the UST.

(a) ~~This~~this over-excavation may be performed without the supervision of a certified UST ~~Consultant~~consultant.

(b) ~~Appropriate~~appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with Rule R311-201 for the purpose of determining the extent and degree of contamination.

**KEY:** hazardous substances, petroleum, underground storage tanks

**Date of Enactment or Last Substantive Amendment:** ~~2021~~October 10, 2014

**Notice of Continuation:** March 27, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-402; 19-6-403

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-205	Filing ID 53582

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-205. Underground Storage Tanks: Site Assessment Protocol

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):

Removes obsolete references and incorporate sampling standards that are available to the public.

Clarifies that vapor samples are included in environmental media.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The change to Section R311-205-2 removes outdated or not easily accessible documents incorporated by reference. Incorporates by reference the "Utah Petroleum Storage Tank Environmental Media Sampling Handbook, dated June 1, 2021".

The change to Section R311-205-2 changes "environmental samples" to "environmental media samples".

The change to Subsection R311-205-2(c) changes the "Petroleum Storage Tank Trust Fund" to "Environmental Assurance Program" for clarification.

The change to Subsection R311-205-2(d) adds vapor sampling to types of environmental media.

The change updates this rule and ACT references, as applicable.

The changes update punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

**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 any fiscal impact on other individuals revenues or expenditures because all proposed changes are minor corrections and clarifications.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There is no anticipated cost to affected persons; however, there is a potential time savings because of an increase in efficiency in locating guidance documents.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are minor corrections and clarifications. Kim Shelley, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-413	Section 19-6-403
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**Incorporations by Reference Information**

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

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Petroleum Storage Tank Environmental Media Sampling Handbook
<b>Publisher</b>	Division of Environmental Response and Remediation, UST Branch
<b>Date Issued</b>	June 1, 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. See Section 63G-3-302 and Rule R15-1 for more information.)**

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

<b>10. This rule change MAY become effective on:</b>	10/29/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-205. Underground Storage Tanks: Site Assessment Protocol.**

**R311-205-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-205-2. Site Assessment Protocol.**

(1) General Requirements.

(a) ~~When~~when a site assessment or site check is required, pursuant to 40 CFR 280 or Subsection 19-6-428(3), owners or operators shall perform the work or commission the work to be performed ~~[a site assessment or a site check]~~according to ~~[the protocol outlined in]~~Rule R311-205 or equivalent, as approved by the ~~[Director]~~director.

~~(b) [Additional]additional environmental media samples must be collected when contamination is found, suspected, or as requested by the [Director]director.~~

~~[(b) This Subsection incorporates by reference the documents referenced in Subsections R311-205-2(a)(2)(A) through (C). These documents contain guidance and methodologies for collecting soil and groundwater samples.~~

~~(i) Groundwater samples shall be collected in accordance with "RCRA Ground Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), published by EPA and dated September 1986, or as determined by the Director.~~

~~(ii) Surface water samples shall be collected in accordance with protocol established in "Compendium of ERT Surface Water and Sediment Sampling Procedures", published by EPA and dated January 1991, or as determined by the Director.~~

~~(iii) Soil samples shall be collected in accordance with "Description and Sampling of Contaminated Soils, A Field Pocket Guide", published by EPA and dated November 1991, or as determined by the Director.]~~

(c) all environmental media samples are to be collected according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, dated June 1, 2021, which is hereby incorporated by reference, or as determined by the director.

~~(e)d~~ Owners and operators must document and report to the ~~[Director]director~~ the following:

- ~~(i) sample types[;];~~
- ~~(ii) sample locations and depths[;];~~
- ~~(iii) field and sampling measurement methods[;];~~
- ~~(iv) the nature of the stored substance[;];~~
- ~~(v) the type of backfill and native soil[;];~~
- ~~(vi) the depth to groundwater[;]; and~~
- ~~(vii) other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.~~

~~(e)e~~ ~~[The]the~~ owner or operator ~~[shall]must~~ report the discovery of any release or suspected release to the ~~[Director]director~~ within ~~[twenty-four]24~~ hours.

~~(i) [Owners]owners~~ or operators ~~[shall]must~~ begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release.

~~(ii) [Owners]owners~~ or operators ~~[shall]must~~ begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

~~(e)f~~ ~~[All]all~~ environmental media samples ~~[shall]must~~ be collected by a certified ~~[groundwater and soil-]sampler~~ who meets the requirements of Rule R311-201.

~~(i) [The]the~~ certified ~~[groundwater and soil-]sampler~~ shall record the depth below grade and location of each sample collected to within one foot.

~~(f)g~~ ~~[All]all~~ environmental media samples ~~[shall]must~~ be analyzed within the time frame allowed, in accordance with ~~[Table 4.1 of "RCRA Ground Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1),the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, by a [Certified Environmental Laboratory]certified environmental laboratory.~~

~~(i) [Soil]soil~~ samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

~~(g)h~~ ~~[Environmental]environmental media~~ samples for UST permanent closure or change in service ~~[shall]must~~ be collected according to the protocol outlined in Subsection R311-205-2(~~b~~2), after the UST system is emptied and cleaned and after the closure plan has been approved.

~~(h)i~~ ~~[Environmental]environmental media~~ confirmation samples are required following over-excavation of soils.

~~(i) [Confirmation]confirmation~~ samples shall be taken at locations and depths sufficient to detect the presence, extent, and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F, and G.

~~(ii) [Additional]additional~~ confirmation samples may be required as determined by the ~~[Director]director~~.

~~(i)j~~ ~~[Upon]upon~~ confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the ~~[Director]director~~ within the specified time frames~~[as outlined in compliance schedules]~~.

~~(j)k~~ ~~When]when~~ conducting environmental media sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as ~~[outlined in compliance schedules, or as determined]requested~~ by the ~~[Director]director~~.

(i) ~~Techniques~~ techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the ~~Director~~ director, may be used to satisfy requirements of determining native soil type.

(k) ~~Other~~ other types of environmental media or quality assurance samples may be required as determined by the ~~Director~~ director.

(2) Site ~~Assessment Protocol~~ assessment protocol for UST ~~Closure~~ closure.

(a) ~~The~~ the appropriate number of environmental media samples, as described in ~~Subsection~~ Subsections R311-205-2(b)(2)(4) and R311-205-2(3) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping, or dispenser island.

(i) ~~Any~~ any other samples required by Subsection R311-205-2(a) must also be collected.

(ii) ~~Soil~~ soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface.

(A) ~~If~~ if groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(2)(4) and R311-205-2(3) shall be collected from the unsaturated zone immediately above the capillary fringe.

(iii) ~~Groundwater~~ groundwater samples collected from an excavation shall be collected using proper surface water collection techniques ~~from a properly installed groundwater monitoring well,~~ according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, or as determined by the ~~Director~~ director.

(b) ~~All~~ all environmental media samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d)(2) and R311-205-2(5).

(b)(c) ~~One~~ one soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental media samples, at each tank and product piping area.

(i) ~~For~~ for all dispenser islands, only one representative sample to determine native soil type is required.

(ii) ~~Techniques~~ techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(e)(d) ~~For~~ for purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

(d)(3) Environmental ~~Sampling Protocol~~ sampling protocol for UST closures:

(i)(a) ~~For~~ for a tank area containing one UST, one soil sample shall be collected at each end of the tank.

(i) ~~If~~ if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(ii)(b) ~~For~~ for a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area.

(i) ~~If~~ if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(iii)(c) ~~Product~~ product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections, and fittings ~~at~~.

(i) these samples must be collected at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled.

(ii) ~~If~~ if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(iv)(d) ~~For~~ for dispenser islands, environmental media samples shall be collected from the middle of each dispenser island.

(i) ~~Additional~~ additional environmental media samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled.

(ii) ~~If~~ if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

(3)(4) Site ~~Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program~~ check requirements for re-applying to participate in the Environmental Assurance Program.

(a) ~~Owners~~ owners or operators wishing to re-apply for participation in the ~~Petroleum Storage Tank Trust Fund~~ Environmental Assurance Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a).

(i) ~~The~~ the tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(b) ~~The~~ the owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program.

(i) ~~The Director~~ the director shall review and approve the site check plan prior to its implementation.

(c) ~~The~~ the site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b)(2), or as determined by the ~~Director~~ director on a site-specific basis.

(d) ~~Additional~~ additional sampling may be required by the ~~Director~~ director based on review of the proposed site check plan and site-specific conditions.

(4)(5) Laboratory ~~Analyses of Environmental Samples~~ analyses of environmental media samples.

(a) ~~Environmental~~ environmental media samples which have been collected to determine levels of contamination from ~~underground storage tanks shall~~ USTs must be analyzed by a ~~Certified Environmental Laboratory~~ certified environmental laboratory.

(b) ~~Unless~~ unless otherwise approved by the ~~Director~~ director, the required analytes and corresponding analytical methods shall be:

(i) ~~Gasoline~~ for gasoline contamination[-];

(A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>) by either EPA 8015 or EPA 8260; and

(B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), and methyl tertiary butyl ether (MTBE) by either EPA 8021 or EPA 8260.

(ii) ~~Diesel~~ for diesel fuel contamination[-];

(A) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>) by EPA 8015; and

(B) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) by either EPA 8021 or EPA 8260.

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- (iii) ~~Used~~for used oil contamination[-];
  - (A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and
  - (B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.
- (iv) ~~New~~for new oil contamination[-];
  - (A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.
  - (v) ~~Contamination~~contamination from ~~underground storage tanks~~USTs which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the ~~Director~~director.
  - (vi) ~~Contamination~~for contamination of an unknown petroleum product type[-];
    - (A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>) by either EPA 8015 or EPA 8260;
    - (B) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>) by EPA 8015;
    - (C) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and
    - (D) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.
  - (vii) potential vapor intrusion from petroleum product types shall be analyzed for appropriate constituents as determined by the director.
- (b)(c) ~~All~~all original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed.
- (d) ~~Environmental~~environmental media samples ~~shall~~must be collected and transported under chain of custody according to EPA methods as approved by the ~~Director~~director.
- (e)(c) ~~Reporting~~reporting limits used by laboratories analyzing environmental media samples taken under this rule shall be below ~~initial screening levels~~Initial Screening Levels for the contaminated media under study.
  - (i) ~~Environmental~~environmental media samples shall be analyzed with the least possible dilution to ensure reporting limits are below ~~initial screening levels~~Initial Screening Levels to the extent possible.
  - (ii) ~~If~~if more than one determinative analysis is performed on any given environmental media sample, the final dilution factor used and the reporting limit must be reported by the laboratory.
    - (A) ~~As~~as an alternative to diluting environmental media samples, the laboratory shall ~~consider using~~use appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference.
    - (iii) ~~Any~~any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

**KEY: petroleum, underground storage tanks**  
**Date of Enactment or Last Substantive Amendment:**  
**2021**~~February 14, 2014~~  
**Notice of Continuation: March 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: 19-6-105;**  
**19-6-403; 19-6-413**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-206	Filing ID 53583

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Removes the requirement for testing secondary containment interstitial space of tanks and piping for the purpose of risk calculation in applying for an Environmental Assurance Fee Rebate. This language was added to this rule in anticipation that this testing would be required by the October 13, 2015, federal underground storage tank regulations. This testing was not required by federal regulation.
Clarifies the requirements and timeline for facilities that participates in the Environmental Assurance Program and are sold to a company with facilities that do not participate in the Program.
Removes the document "EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix" that is incorporated by reference. This document was replaced by "UST and LUST Performance Definitions as of October 2018" which contains the "EPA UST Technical Compliance Rate"



document, which is incorporated by reference in Subsection R311-201-12(10).

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The change to Section R311-206 changes "the Fund" to "the Environmental Assurance Program".

The change to Subsection R311-206-4(3) deletes outdated rule verbiage.

The change to Subsection R311-206-4(4) moves the requirement for the owner or operator to submit an independent audit to demonstrate net worth for self-insurance, for clarification.

The change to Subsection R311-206-4(5) moves the language regarding requirement for submission of an independent audit, for clarification.

The change to Subsection R311-206-9(4) adds a requirement that for any facility that participates in the Environmental Assurance Program and is sold to a company with facilities that do not participate in the Program, the date of termination of coverage is the closing date for the real estate transaction. The purchaser shall provide documentation of the closing date to the director within 30 days of closing.

The change to Subsection R311-206-10(2) updates compliance status determination using the "EPA UST Technical Compliance Rate" and removes the document incorporated by reference "EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix".

The change to Subsection R311-206-11(3) removes the requirement for testing secondary containment interstitial space of tanks and piping for the purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

The change to Subsection R311-206-11(4) removes secondary containment interstitial space testing requirement for piping for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

The change to Subsection R311-206-11(5) removes secondary containment interstitial space testing requirement for piping containment sumps and under-dispenser containment for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

The change updates this rule and ACT references, as applicable.

The change updates punctuation, capitalization, structure, and word selection to better reflect rulewriting standards

recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The change to Subsection R311-206-9(4) is not expected to have any fiscal impact on state government revenues or expenditures because all state-owned facilities are required by statute to participate in the Environmental Assurance Program.

The change to Subsection R311-206-10(2) is not expected to have any fiscal impact on state government revenues or expenditures because it only updates the document used for determining compliance and removes an outdated document, which was incorporated by reference.

In the change to Subsections R311-206-11(3), (4), and (5), there is a direct fiscal benefit to state-owned facilities with underground storage tanks (USTs). The 73 state-owned UST sites could see an approximate total combined benefit of \$3,700 per year, by being qualified as secondarily contained without having to test double walled tanks and lines. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance Program by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impact on state government revenues or expenditures because these proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties.

**B) Local governments:**

The change to Subsection R311-206-9(4) is not expected to have any fiscal impact on local governments' revenues or expenditures because it clarifies an existing requirement and defines a timeline.

The change to Subsection R311-206-10(2) is not expected to have any fiscal impact on local governments' revenues or expenditures because it only updates the document used for determining compliance and removes an outdated document which was incorporated by reference.

In the change to Subsections R311-206-11(3), (4), and (5), there is a direct fiscal benefit to local government-owned facilities with USTs. There are approximately 33 sites owned by local governments that are qualified as secondarily contained and will not have to test the double walled tanks and lines. The approximate total benefit for all these facilities combined is \$2,800 per year. This

estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance Program by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impact on local governments' revenues or expenditures because these proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

The change to Subsection R311-206-9(4) is not expected to have any fiscal impact on small businesses' revenues or expenditures because it clarifies an existing requirement and defines a timeline.

The change to R311-206-10(2) is not expected to have any fiscal impact on small businesses' revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

In the change to Subsections R311-206-11(3), (4), and (5), there is a direct fiscal benefit to small business-owned facilities with USTs. There are approximately 176 small business-owned sites that are qualified as secondarily contained and will not have to test double walled tanks and lines. The approximate total benefit for all these facilities combined is \$136,700 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance Program by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impact on small businesses' revenues or expenditures because these proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

The change to Subsection R311-206-9(4) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it clarifies an existing requirement and defines a timeline.

The change to Subsection R311-206-10(2) is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it only updates the document used for determining compliance and removes an outdated document which was incorporated by reference.

In the change to Subsections R311-206-11(3), (4), and (5), there is a direct fiscal benefit to non-small business-owned facilities with USTs. There are approximately 332 non-small business-owned sites that are qualified as secondarily contained and will not have to test double walled tanks and lines. The approximate total benefit for all these facilities combined is \$271,500 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance Program by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because these proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

The change to Subsection R311-206-9(4) is not expected to have any fiscal impact on other individual's revenues or expenditures because it clarifies an existing requirement and defines a timeline.

The change to Subsection R311-206-10(2) is not expected to have any fiscal impact on other person's revenues or expenditures because it only updates the document used for determining compliance and removes an outdated document which was incorporated by reference.

In the change to Subsections R311-206-11(3), (4), and (5), there is a direct fiscal benefit to other person-owned facilities with USTs. There are three other person-owned sites that are qualified as secondarily contained and will not have to test double walled tanks and lines. The approximate total benefit for all these facilities combined is \$1,100 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance Program by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impact on other person's revenues or expenditures because these proposed changes are minor corrections and clarifications and do not change the business practices of any of the affected parties.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

No compliance costs are anticipated. The proposed changes are a benefit to owners of USTs who previously did not qualify for a rebate from the Environmental Assurance fee. The other proposed changes are for clarification and document updates and have no compliance costs.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Underground storage tanks owners and operators will see a direct fiscal benefit from the rule change by not having to test their secondary containment to qualify for a rebate of the environmental assurance fee for eligible facilities. Kim Shelley, Executive Director

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$3,700	\$3,700	\$3,700
Local Governments	\$2,800	\$2,800	\$2,800
Small Businesses	\$136,700	\$136,700	\$136,700
Non-Small Businesses	\$271,500	\$271,500	\$271,500
Other Persons	\$1,100	\$1,100	\$1,100
<b>Total Fiscal Benefits</b>	<b>\$415,800</b>	<b>\$415,800</b>	<b>\$415,800</b>
<b>Net Fiscal Benefits</b>	<b>\$415,800</b>	<b>\$415,800</b>	<b>\$415,800</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelly, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-428	Section 19-6-410.5
Section 19-6-403		

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.**

**R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-206-2. Declaration of Financial Assurance Mechanism.**

(1) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks [shall] must:

- (a) meet all requirements for participation in the Environmental Assurance Program[;]; or
- (b) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

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(2) Owners or operators ~~[shall]~~must declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(3) For the purposes of Subsection 19-6-412(6), all tanks at a facility ~~[shall]~~must be covered by the same financial assurance mechanism, and ~~[shall]~~must be considered to be in one area, unless the ~~[Director]~~director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

**R311-206-3. Requirements for Issuance of Certificates of Compliance.**

(1) The ~~[Director]~~director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

- (a) the owner or operator has a certificate of registration;
- (b) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(c) the UST test, conducted within ~~[6]~~six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(d) the owner or operator has submitted a letter to the ~~[Director]~~director stating that based on customary business inventory practices standards there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the ~~[Director]~~director, and has declared the financial assurance mechanism that will be used;

(f) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees;

(g) the owner or operator has submitted an as-built drawing that meets the requirements of Subsection R311-200-1~~(b)(2)~~~~(2)(b)~~; and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

**R311-206-4. Requirements for Environmental Assurance Program Participants.**

(1) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the ~~[Director]~~director as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the ~~[Director]~~director, any ~~[Petroleum Storage Tank]~~petroleum storage tank fee for that tank for the current fiscal year ~~[shall be]~~is due when the tank is brought into use, as a requirement for receiving a ~~[Certificate of Compliance]~~certificate of compliance.

~~(3) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.]~~

~~(4)~~(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

~~(5)~~(4) Auditing of UST facility throughput records.

(a) ~~[Owners]~~owners and operators ~~[shall]~~must retain for seven years the monthly tank throughput records of the facility.

~~(b) [Tank]~~tank throughput records shall include all financial and product documentation for receipts, ~~[dispositions]~~deliveries, transfers, and inventories.

~~(b)(c) [The Director]~~the director may audit or ~~[order]~~commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) ~~[Records]~~records ~~[shall]~~must be made available at the Department for inspection within 30 calendar days after receiving notice from the ~~[Director]~~director.

(ii) ~~[Audits]~~audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) ~~[Auditing]~~auditing tank throughput may be accomplished by any method approved by the ~~[Director]~~director.

(iv) ~~[All]~~all costs of an independent audit shall be paid by the owner or operator.

~~(6)~~(5) Owners or operators eligible for ~~[coverage by the Fund]~~shall participation in the Environmental Assurance Program must demonstrate financial assurance for the difference between coverage provided by the ~~[Fund]~~Environmental Assurance Program and coverage amounts required by 40 CFR 280 Subpart H.

~~(a) [If]~~if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, ~~[the owner or operator]~~they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the ~~[Director]~~director.

~~(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.~~

~~(A) the owner or operator will bear the expense for the audit.~~

~~(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).~~

~~(b) [An]~~an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

~~(c) [The]~~the processing fee requirement referenced in Subsection R311-206-5~~(b)(2)~~ is not applicable because the administrative cost is covered by the ~~[PST fund]~~Environmental Assurance Program fee.~~[However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).]~~

**R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.**

(1) Owners and operators who elect to utilize an alternate form of financial assurance ~~[shall]~~must use one or a combination of mechanisms specified in 40 CFR 280.94.

(a) ~~[Owners]~~owners and operators ~~[shall]~~must submit to the ~~[Director]~~director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(a)(b) ~~[Formats]~~formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(b)(c) ~~[If]~~if the financial assurance documentation submitted to the ~~[Director]~~director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) ~~Processing~~ processing fees for subsequent reviews of financial assurance documents ~~shall be~~ are due on July 1 of the fiscal year for which the review is required.

(a) ~~b~~ Pursuant pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) ~~This~~ this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 ~~through~~ 280.102 and 280.104 ~~through~~ 280.107.

(ii) ~~A~~ a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5 ~~(b)2~~ ~~above~~.

(b) ~~c~~ ~~If~~ if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the ~~Director~~ director, and an additional processing fee shall be paid in circumstances as determined by the ~~Director~~ director.

(3) Evidence of a current and approved financial assurance mechanism ~~shall~~ must be reported to the ~~Director~~ director as follows:

(a) ~~Owners~~ owners and operators using the financial test of self-insurance ~~shall~~ must submit the "Letter from Chief Financial Officer" to the ~~Director~~ director within the maximum 120 ~~day~~ period specified in 40 CFR 280.95.

(b) ~~Owners~~ owners and Operators using insurance and risk retention group coverage for financial assurance ~~shall~~ must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the ~~Director~~ director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) ~~If~~ if the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and ~~40 CFR~~ 280.97(b)(2)2.d. to the ~~Director~~ director as well as the insured.

(ii) ~~The~~ the insurer ~~shall~~ must have a rating of A- or greater by A.M. Best Co.

(c) ~~Owners~~ owners and operators using an irrevocable letter of credit ~~shall~~ must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the ~~Director~~ director within 30 days of issuance from the issuing institution.

(d) ~~Owners~~ owners and operators using a fully funded trust fund for financial assurance ~~shall~~ must submit proof of the trust fund and formal certification of acknowledgement to the ~~Director~~ director within 30 days after implementation of the trust fund.

(e) ~~Owners~~ owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the ~~Director~~ director within 30 days of issuance.

(i) ~~The~~ the owner or operator ~~shall~~ must also submit the guarantor's letter from ~~the~~ chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) ~~Owners~~ owners and operators using a surety bond for financial assurance ~~shall~~ must submit the surety bond document, standby trust fund, and certification of acknowledgement to the ~~Director~~ director within 30 days of issuance.

(g) ~~Guarantees~~ guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) ~~Owners~~ owners and operators using one of the local government methods specified in 40 CFR 280.104 through ~~280.107~~ ~~shall~~ must submit the letter from chief financial officer and associated documents to the ~~Director~~ director within 120 days of the end of the owner ~~/operator's~~, operator, or guarantor's fiscal year.

(4) The ~~Director~~ director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) ~~Information~~ information requested ~~shall~~ must be reported to the ~~Director~~ director within 30 calendar days after receiving the request.

(a) ~~b~~ ~~Owners~~ owners and operators ~~shall~~ must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(b) ~~c~~ ~~Owners~~ owners and operators ~~shall~~ must keep records of all financial assurance mechanisms ~~for a period of three years~~ in accordance with 40 CFR 280.111 and 280.113.

(e) ~~d~~ ~~The Director~~ the director may audit or ~~order~~ commission an audit of records supporting the financial assurance mechanism at any time.

(i) ~~Audits~~ audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) ~~Auditing~~ auditing of financial assurance methods may be accomplished by any method approved by the ~~Director~~ director.

(5) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the ~~Director~~ director ~~shall be~~ is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the ~~Director~~ director.

**R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and ~~above ground storage tanks~~ Aboveground Storage Tanks to the Environmental Assurance Program.**

(1) Owners or operators of eligible exempt ~~underground storage tanks~~ USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(a) meeting the requirements of ~~Section 19-6-428 and~~ Subsections 19-6-415(1) and ~~Subsection~~ R311-206-3 ~~(a)1~~;

(b) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(c) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

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(2) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

- (a) meeting the requirements of Section 19-6-428 and Subsections 19-6-415(2) and R311-206-3(a);
(b) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 15A-1-403;
(c) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and
(d) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(1) The Director shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(2) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), Section 19-6-428(3), and Section R311-206-3.

(3) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(4) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the Fund lapse under Section 19-6-411(3)(c)(ii) shall:

- (a) meet the requirements of Subsection 19-6-428(3); and
(b) pay all fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2.

(a) Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the Director may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires:

- (a) release reporting;
(b) abatement;
(c) investigation;
(d) corrective action; or
(e) other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(1) In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414 or;
(b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5) or;

(c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4)(d); or

(d) that is a new installation, and has not been issued a certificate of compliance.

(2) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank does not have:

- (a) spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d) or;
(b) overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d) or;
(c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or
(d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(4) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(e).

(5) The Director may issue written approval for a delivery of petroleum to:

- (a) provide ballast for a new tank during installation, or
(b) allow for the tank tightness test required under Section 19-6-413.

(6) The delivery prohibition tag shall remain in place until the Director issues:

- (a) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):
(i) a new certificate of compliance for the tank; and
(ii) written authorization to remove the delivery prohibition tag; or
(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):
(i) written authorization to remove the delivery prohibition tag.

(7) If a delivery prohibition tag is removed without the authorization specified in Subsections R311-206-8(f)(1)(A)(i) or R311-206-8(f)(2)(A)(i), the UST owner or operator shall be subject to:

- (a) a re-inspection and any applicable fees; and
(b) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(1) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the Environmental Assurance Program and be exempted from the requirements described in Section R311-206-4 by:

- (a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or
(b) meeting the following requirements:
(i) demonstrating compliance with Section R311-206-5; and
(ii) notifying the Director in writing at least 30 days before the date of cessation of participation in the Environmental Assurance Program, and specifying the date of cessation.

(A) ~~The Director~~the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other USTspetroleum storage tanks owned or operated by the owner or operator.

(B) ~~The~~the date of cessation of participation in the ~~program~~Environmental Assurance Program may occur after the date designated in Subsection R311-206-9(~~a~~1)(~~2~~b)(~~B~~ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) ~~The fund will not give~~pro-rata refunds will not be given.

(3) For tanks being removed voluntarily from the ~~program~~Environmental Assurance Program, the date of cessation of participation in the ~~program~~Environmental Assurance Program shall be the date on which coverage under the ~~program~~Environmental Assurance Program ends.

(a) ~~Subsequent~~subsequent claims for payments from the ~~fund~~Fund must be made in accordance with ~~Section~~Sections 19-6-424 and ~~Section~~R311-207-2.

(4) For any facility that participates in the Environmental Assurance Program and is sold to a company with facilities that do not participate in the Environmental Assurance Program, the date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

#### **R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.**

(1) Owners and operators who choose not to participate in the Environmental Assurance Program ~~shall~~must, before any subsequent participation in the ~~program~~Environmental Assurance Program, meet the following requirements:

(a) notify the ~~Director~~director of the intent to participate in the ~~program~~Environmental Assurance Program;

(b) comply with the requirements of Subsection 19-6-428(3)~~;~~ and

(c) meet the requirements of Subsection R311-206-3(~~a~~1) to qualify for a new certificate of compliance.

(2) In accordance with Subsection 19-6-428(3)(b), the ~~Director~~director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each USTpetroleum storage tank to participate in the ~~program~~Environmental Assurance Program, meets the following requirements at the time the owner or operator applies for participation:

(a) ~~The~~the last two compliance inspections verify ~~significant operational~~compliance with EPA UST Technical Compliance Rate, and verify that no release has occurred.~~Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.]~~

(b) ~~The owner or operator documents~~documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable~~;~~ and

(iv) internal lining inspections, if applicable.

(c) ~~The~~the period of non-participation in the Environmental Assurance Program is less than six months, or the USTpetroleum storage tank is less than ten years old.

#### **R311-206-11. Environmental Assurance Fee Rebate~~Program~~.**

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the Environmental Assurance Program, ~~shall receive~~a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference.

(a) ~~The~~the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the Environmental Assurance Program shall be:

(a) calculated on a facility basis;

(b) valid for the calendar year;

(c) based on the facility characteristics as of December 15 of the prior calendar year; and

(d) determined, at sites with mixed equipment, by considering the highest risk-valued USTpetroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(a) meet the requirements for secondary containment in 40 CFR 280.20~~;~~ and

(b) meet one of the following:

(i) use an interstitial sensor and documentation of monthly interstitial monitoring~~;~~ or

(ii) documentation of monthly visual checks of a brine-filled interstitial space~~;~~ or

~~(iii) have the interstitial space tested at least once every three years and be documented to be tight by using vacuum, pressure, or liquid testing in accordance with one of the following:~~

~~(A) requirements developed by the manufacturer, or~~

~~(B) a Code of Practice developed by a nationally recognized association or independent testing laboratory.]~~

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(a) meet the requirements for secondary containment outlined in 40 CFR 280.20~~;~~ and

(b) meet one of the following:

(i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(ii) use an interstitial monitoring method not listed in Subsection R311-206-11(~~d~~4)(~~2~~b)(~~A~~i)~~;~~ and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (e)(2)(C).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall~~;~~

~~(a)~~ be double-walled with monthly documentation of monitoring of the space between the walls, ~~or~~

~~(b) be tested at least once every three years to show the piping containment sump or under-dispenser containment is liquid~~

NOTICES OF PROPOSED RULES

tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

- ~~(i) requirements developed by the manufacturer, or~~
- ~~(ii) a code of practice developed by a nationally recognized association or independent testing laboratory.~~

(6) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table", ~~dated June 2, 2014, which is hereby incorporated by reference. [The table, dated June 2, 2014, lists risk tiers and the rebate for each tier.]~~

(7) A facility that begins participation in the Environmental Assurance Program after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the Environmental Assurance Program.

**KEY:** ~~[hazardous substances,]~~ petroleum, underground storage tanks

**Date of Enactment or Last Substantive Amendment:** ~~2021~~ January 1, 2017

**Notice of Continuation:** March 27, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-403; 19-6-410.5; 19-6-428

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-207	Filing ID 53584

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks

<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
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The Board and the director of the Division of Environmental Response and Remediation (DERR) are tasked with making rules and administering the UST program. Several years ago, as legislation regarding the Petroleum Storage Tank (PST) Trust Fund was under consideration by the legislature, the Division received direction from the Legislature to review the Environmental Assurance Program reimbursement process. In 2018, the Division conducted an internal audit of several PST Trust Fund claim reimbursement submissions. One major finding was that similar common tasks were being submitted for reimbursement from the PST Trust Fund with high variability in hours, costs, and the level of personnel completing the tasks. Some tasks' variability ranged as high as four times that of other similar submissions. This audit led to the development of the "Cost Guidelines for Utah Underground Storage Tank Sites" document. This document establishes the framework for a standardized and consistent approach for work done by state contractors and for petroleum storage tank (PST) Trust Fund reimbursements.

<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
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The change to Subsection R311-207-3(8) clarifies the eligibility determination process.

The change to Section R311-207-4 removes pay for performance reimbursement to claimants.

The change to Subsection R311-207-4(2)(a) clarifies the signature requirement for reimbursement from the PST Trust Fund.

The change to Subsection R311-207-4(8)(a)(i) moves the definition "Related parties" to a more relevant location, Underground Storage Tanks: Definitions.

The change to Subsection R311-207-4(8)(a)(ii) incorporates by reference the "Cost Guidelines for Underground Storage Tank Sites" document, dated June 3, 2021.

The change to Subsection R311-207-4(8)(a) removes yearly approval of competitive bid schedule for frequently used services.



The change to Subsection R311-207-4(8)(b) removes sole source justification for analytical laboratories and replace it with the Cost Guidelines document.

The change to Section R311-207-5 removes the document "TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS" and "UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES" that is incorporated by reference and replaces it with the Cost Guidelines document.

The change to Subsection R311-207-5(2) adds the Cost Guidelines document for reimbursement of claims.

The change to Subsection R311-207-5(4) adds the Cost Guidelines document.

The change to Subsection R311-207-5(6) incorporates the director's ability to request audits of PST Trust Fund reimbursable work and records.

The change to Section R311-207-7 removes the document "CONSULTANT PERSONNEL QUALIFICATIONS AND TASK DESCRIPTIONS" table that is incorporated by reference and replaces it with the requirements found in the Cost Guidelines document; and removes language referring to fee schedules for reimbursement by the PST Trust Fund and replaces it with the Cost Guidelines document.

The change to Subsection R311-207-9(1)(b) removes the requirement for approved PST Trust Fund labor rates and refers to the Cost Guidelines document.

The change updates this rule and ACT references, as applicable.

The change updates punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

The change to Subsection R311-207-4(8)(a)(i) is not expected to have any fiscal impact because it moved the definition "Related parties" to a more relevant location, Underground Storage Tanks: Definitions.

The change to Subsection R311-207-4(8)(a)(ii), DERR personnel and PST Trust Fund, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. The change also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-4(8)(b), PST Trust Fund, the fiscal cost is inestimable. Relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines document.

In the change to Section R311-207-5, PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. The change also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-5(2), PST Trust Fund, the fiscal cost is inestimable and the relevant data is unavailable. Use of the Cost Guidelines document standardizes costs, rates, and common equipment to be reimbursed on claims.

The change to Subsection R311-207-5(4) is not expected to have any fiscal impact because it is clarification and updates with added Cost Guidelines for clarity.

In the change to Subsection R311-207-5(6), the fiscal cost to the Division is anticipated for use of DEQ Auditor. DEQ Auditor's time is charged for performing audits. The change also ensures accuracy and consistency of charges submitted and reimbursed.

In the change to Section R311-207-7, PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST, the fiscal cost is inestimable and the relevant data is unavailable. Standardize labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Federal Consumer Price Index, removing the need for yearly bidding by contractors.

In the change to Subsection R311-207-9(1)(b), the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The change to Subsection R311-207-3(8) is not expected to have any fiscal impact because it is a process clarification.

The change to Subsection R311-207-4(2)(a) is not expected to have any fiscal impact because it is a requirement clarification.

The change to Subsection R311-207-4 is not expected to have any fiscal impact because it removed an option that is outdated and no longer utilized.

petroleum storage tank costs. The change also eliminates the need to review and approve yearly rates for statement of qualifications.

**B) Local governments:**

This rule change is not expected to have any significant fiscal impact on local governments' revenues or expenditures because it is clarification and standardization of the process and is not anticipated to change the business practices of the local governments.

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

The change to Subsection R311-207-3(8) is not expected to have any fiscal impact because it is a process clarification.

In the change to Subsection R311-207-4(8)(a), the fiscal cost is inestimable and the relevant data is not available. Cost of yearly bidding is not reported but is anticipated to be a cost savings.

In the change to Subsection R311-207-4(8)(a)(i), is not expected to have any fiscal impact because it moved the definition "Related parties" to a more relevant location, Underground Storage Tanks: Definitions.

In the change to Subsection R311-207-4(8)(b), the fiscal cost is inestimable and the relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines document.

In the change to Section R311-207-5, contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. It also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-5(2), PST Trust Fund, the fiscal cost is inestimable and the relevant data is unavailable. Use of the Cost Guidelines document helps standardize costs, rates, and common equipment to be reimbursed on claims.

In the change to Subsection R311-207-5(4), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of eligible leaking petroleum storage tank costs. The change also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-5(6), contractors for UST owners and operators, the fiscal cost is inestimable. Audits will be conducted based on random

selection and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

In the change to Section R311-207-7, contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Federal Consumer Price Index, removing the need of yearly bidding by contractors.

In the change to Subsection R311-207-9(1)(b), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. The change also eliminates the need to review and approve yearly rates for statement of qualifications.

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

In the change to Subsection R311-207-4(8)(a), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is not available. Cost of yearly bidding is not reported but is anticipated to be a cost savings.

The change to Subsection R311-207-4(8)(a)(i) is not expected to have any fiscal impact because it moved the definition "Related parties" to a more relevant location, Underground Storage Tanks: Definitions.

In the change to Subsection R311-207-4(8)(b), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines document.

In the change to Section R311-207-5, contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. The change also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-5(4), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of eligible leaking petroleum storage tank costs. The change also eliminates the need to review and approve rates for statement of qualifications.

In the change to Subsection R311-207-5(6), contractors for UST owners and operators, the fiscal cost is inestimable. Audits will be conducted based on random selection and at the discretion of the director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

In the change to Section R311-207-7, contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Federal Consumer Price Index, removing the need for yearly bidding by contractors.

In the change to Subsection R311-207-9(1)(b), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is unavailable. Standardize costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. The change also eliminates the need to review and approve yearly rates for statement of qualifications.

**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**):

In the change to Subsection R311-207-4(8)(a), contractors for UST owners and operators, the fiscal cost is inestimable and the relevant data is not available. Cost of yearly bidding is not reported but is anticipated to be a cost savings.

In the change to Section R311-207-7, DERR Personnel, the fiscal savings are inestimable and the relevant data is unavailable. Standardize labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Federal Consumer Price Index, removing the need for yearly bidding.

In the change to Subsection R311-207-9(1)(b), contractors for UST owners and operators, the fiscal cost is inestimable. Analysis will be prohibitively expensive. Standardize costs replacing individual company approved rates and simplifying processes. Overall net change is expected to be small but variability in work and contractors selected by owners and operators is different each year. Standardize labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Federal

Consumer Price Index, removing the need for yearly bidding.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Audits of records for reimbursement are not expected to add a significant cost outside of the state government because the maintenance of these records is already required. Additional costs will be incurred by the PST Trust Fund for the hours billed by the Department of Environmental Quality Auditor when conducting these audits. The audits may be determined by random selection or for verification of accuracy of records submitted for reimbursement. The cost incurred by these audits to the PST Trust Fund cannot be calculated because of the variability in the time required and volume of the records.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

These changes are to clarify existing rules and provide a standardized and consistent framework for common work requirements and reimbursement amounts. Most fiscal impacts are not available because of the variability of the work each year in the number of reported releases, the owner's selection of a consultant, and the necessary cleanup work for each release. Kim Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$4,000	\$4,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$4,000</b>	<b>\$4,000</b>
<b>Fiscal Benefits</b>			
State Government	\$9,408	\$5,408	\$5,408
Local Governments	\$0	\$0	\$0

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Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$4,000	\$4,000
<b>Total Fiscal Benefits</b>	<b>\$9,408</b>	<b>\$9,408</b>	<b>\$9,408</b>
<b>Net Fiscal Benefits</b>	<b>\$9,408</b>	<b>\$5,408</b>	<b>\$5,408</b>

**B) Department head approval of regulatory impact analysis:**  
 The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-403	Section 19-6-419	Section 19-6-409
Section 19-6-404	40 CFR Part 280, Subpart H	

**Incorporations by Reference Information**

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

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	Cost Guidelines for Underground Storage Tank Sites
<b>Publisher</b>	Division of Environmental Response and Remediation, UST Branch
<b>Date Issued</b>	June 3, 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. See Section 63G-3-302 and Rule R15-1 for more information.)**

<b>A) Comments will be accepted until:</b>	08/02/2021
<b>B) A public hearing (optional) will be held:</b>	
<b>On:</b>	<b>At:</b>
07/15/2021	02:00 PM
	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.**

**R311-207-1. Definitions.**

Definitions are found in Section R311-200.

**R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.**

(1) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund ~~shall~~ must:

(a) have previously satisfied the requirements of ~~Section~~ Subsection R311-206-3(~~a~~)1;

(b) have a valid certificate of compliance at the time of product release by the covered UST; and

(c) meet the requirements of Section 19-6-424.

(2) Except as provided in ~~Section~~ Subsection R311-207-2(~~e~~)3, a responsible party eligible to receive payments in accordance with Section 19-6-419 ~~shall~~ must submit to the ~~Director~~ director a written ~~Eligibility Application~~ eligibility application to make a claim against the ~~Petroleum Storage Tank Trust~~ Fund:

(a) during a period for which that tank was covered by the ~~fund~~ Fund; ~~or~~

(b) within one year after that ~~fund~~ Fund-covered tank is closed; ~~or~~

(c) within six months after the end of the period during which the tank was covered by the ~~fund~~ Fund; or

(d) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(3) For eligible releases that are discovered and reported to the ~~Director~~ director after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the ~~Director~~ director.

(4) For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the ~~Director~~ director.

(~~4~~)5 A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2(~~b~~)2, shall constitute a claim against the ~~fund~~ Fund in accordance with Section 19-6-424.

(~~5~~)6 The responsible party's share of eligible costs ~~shall remain~~ remains the same, regardless of the number of responsible parties who are associated with a release and covered by the ~~fund~~ Fund.

(a) ~~Only~~ only one responsible party can claim against the fund per release in accordance with Section 19-6-419.

(~~6~~)7 When a facility has an open release and a subsequent ~~PST~~ Fund eligible release occurs at that facility, the ~~PST~~ Fund

allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable ~~[by the Utah Underground Storage Tank Act]~~ under Section 19-6-419.

~~(a) [Additional PST]additional~~ Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release.

~~(b) [The Director]the director~~ shall determine the allowable coverage for a subsequent release.

~~(8) The maximum coverage allowed in Section 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.~~

~~(9) When the [Director]director has made a determination that the clean up standards established for the site pursuant to Section R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. [The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.]~~

### **R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(1) Upon making a claim for coverage under the ~~[fund]Petroleum Storage Tank Trust Fund~~, and after receiving notice from the ~~[Director]director~~ of eligibility to claim against the ~~[fund]Fund~~, the responsible party shall ~~[respond to the compliance schedule]meet compliance time tables~~ issued by the ~~[Director]director~~ ~~[with work plans]. The work plans may address three phases of the compliance schedule as determined by the Director:~~

~~(a) tasks required to bring the site under control;~~

~~(b) tasks required to determine the extent and degree of the release; and~~

~~(c) tasks required to remediate the site until the Director is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Director.~~

~~(2) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and (2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).]~~

~~(2) For allowable costs to be covered by the Fund, the director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6).~~

~~(a) work plans must include a budget for the work.~~

~~(i) budgets must be in compliance with Subsections R311-207-4(8).~~

~~(ii) budgets must include proposed costs in an itemized format as described in Subsection R311-207-4(1) through R311-207-4(5).~~

~~(3) Prior to performing work eligible for reimbursement by the Fund, [The]the consultant must have a Statement of Qualification approved by the [Director]director.~~

~~(a) [The]the initial Statement of Qualification submittal shall include information about the qualifications of all certified UST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.~~

~~(b) [The]the Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:~~

~~(i) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;~~

~~(ii) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and~~

~~(iii) the consultant carries the following insurance:~~

~~(A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;~~

~~(B) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and~~

~~(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.~~

~~(b)c) [The]the Statement of Qualification [shall]must be updated annually in January, and shall be approved by the [Director]director for a period of one year.~~

~~(i) [The]the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3([e]3)([+a])([B]) and R311-207-3(b)([C]).~~

~~(4) [The work plan shall]Work plans must include [information about the claimant's contract with]the Petroleum Storage Tank Trust Fund Work Plan Approval Application and Agreement form documenting the claimant's contract with any proposed consultant or other person performing remedial action [in accordance with the work plans].~~

~~(a) [That-]information provided on that form shall demonstrate that the claimant's contract has met the following requirements [have been met, as determined by the Director]:~~

~~(a)i) [The]the contract shall be with the consultant[;] and [shall-]specify the certified UST consultant and other key personnel for which qualifications are submitted under Subsection R311-207-3([e]3);~~

~~(b)ii) [The]the contract shall require a 100% [percent] payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;~~

~~(e)iii) [The]the consultant shall have no cause of action against the state for payment;~~

~~(e)iv) [The]the contract will specify a subcontracting method consistent with the requirements of R311-207;~~

~~(e)v) [The]the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3([e]3)([+b])([C]iii)[-];~~

~~(f)vi) [Payment]payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;~~

~~(g)vii) [The]the contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and~~

~~(h)viii) [Any]any other requirements specified by the [Director]director.~~

~~(5) [The work plan]Work plans shall [include]address any additional [information required by]requirements outlined in 40 CFR 280.~~

NOTICES OF PROPOSED RULES

(6) The ~~[Director]~~director may waive specific requirements of ~~[Section]~~RULE R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected.

~~\_\_\_\_\_~~ (a) ~~[The Director]~~the director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the ~~[fund]~~Fund will be affected.

(7) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the ~~[Director]~~director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. ~~[For costs to be covered by the fund, the Director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).]~~

(8) A request for time and material reimbursement from the Fund must be received by the ~~[Director]~~director within one year from the date the included work was performed or reimbursement shall be denied.

~~\_\_\_\_\_~~ (a) ~~[If]~~if there are any deficiencies in the request, the claimant ~~[shall have]~~has 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed.

~~\_\_\_\_\_~~ (b) ~~[If]~~if a release was initially denied eligibility and is subsequently found to be eligible ~~[this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement.];~~

~~\_\_\_\_\_~~ (i) work conducted prior to the determination of eligibility is not subject to the one-year requirement; and

~~\_\_\_\_\_~~ (ii) all work conducted after the determination of eligibility is subject to the one-year requirement.

(9) The request for final reimbursement from the ~~[fund]~~Fund must be received by the ~~[Director]~~director within one year from the date of the "No Further Action" letter issued by the ~~[Director]~~director or reimbursement shall be denied.

~~\_\_\_\_\_~~ (a) ~~[If]~~if a release is re-opened as provided for in the "No Further Action" letter, payments from the ~~[fund]~~Fund may be resumed when approved by the ~~[Director]~~director.

(10) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(a) the ~~[Director]~~director ~~[shall]~~must approve all work plans and associated budgets before the consultant initiates any work[,]; and

(b) the contract with the consultant shall comply with Subsections R311-207-3(~~[d]~~4)(~~(1)~~, (3), (6), (7), and (8)).

**R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(1) In order to receive payment from the ~~[fund]~~Petroleum Storage Tank Trust Fund, a claimant ~~[shall]~~must submit ~~[an invoice]~~a request for reimbursement to the ~~[Director]~~director.

(2) The ~~[invoice from the claimant to the fund shall]~~request for reimbursement must be on the form ~~[or forms]~~provided by the ~~[Director]~~director.

~~\_\_\_\_\_~~ (a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.

(3) Reimbursement ~~[may]~~will be on a ~~[pay for performance or on a]~~time and material basis as approved in advance by the ~~[Director]~~director.

(4) All costs for time and material reimbursement ~~[shall]~~must be itemized at a minimum to show the following:

- (a) amounts allocated to each approved work plan budget;
- (b) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (c) sampling, reporting, and laboratory analysis costs;
- (d) equipment rental and materials;
- (e) utilities;
- (f) other direct costs; and
- (g) other items as determined by the ~~[Director]~~director.

~~[(2)]~~5 All itemized expenses ~~[shall]~~must indicate the full name and address of the company or contractor providing materials or performing services.

~~[(3)]~~6 All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the ~~[Director]~~director, with a copy of the original bill provided to the ~~[Director]~~director by the claimant.

~~\_\_\_\_\_~~ (a) ~~[The]~~the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with ~~[Sections]~~Section R311-207-5 and Subsections R311-207-4(~~[e]~~8).

~~[(4)]~~7 For time and material ~~[based]~~reimbursement, before receiving payment under Section 19-6-419, the claimant ~~[shall]~~must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the ~~[Director]~~director, unless the ~~[Director]~~director has agreed to other arrangements.

~~\_\_\_\_\_~~ (a) ~~[The]~~the responsible party ~~[shall remain]~~remains primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

~~[(5)]~~8 For time and material ~~[based]~~reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor ~~[shall]~~must include one or more of the following items:

(a) a minimum of three competitive bids by responsive bidders. ~~[To]~~For a bid to be competitive:

(i) ~~[Two]~~two of the bids must be from bidders who are not related parties ~~[ "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.];~~

~~\_\_\_\_\_~~ (ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the "Cost Guidelines for Underground Storage Tank Sites" document dated June 3, 2021, herein incorporated by reference;

~~[(ii)]~~iii ~~[The]~~the bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition[-]; and

~~\_\_\_\_\_~~ (iv) ~~[The]~~the bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

~~[\_\_\_\_\_ (iii) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Director. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Director. The Director may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar~~

amount the PST Fund will reimburse the claimant for these services, regardless of whether the claimant accepts that bid or another;

(b) sole source justification; or

(i) Analytical laboratories may be justified based on service, data quality and cost;

(c) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(d) other documentation as required or requested by the director to document expenses are reasonable, customary and legitimate.

(9) In accordance with Section 19-6-420, the director may not authorize payment from the Fund for services provided by consultants, contractors, or subcontractors which are ~~in non-compliance~~ not in compliance with the requirements of ~~Section~~ Rule R311-207 or any other applicable federal, state, or local law.

(10) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the director.

(8) The Director may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Director. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Director.

#### **R311-207-5. Customary, Reasonable and Legitimate Expenses.**

(1) Costs claimed by the claimant in accordance with ~~Section~~ Subsection 19-6-419(1) must be customary, reasonable, and legitimate work, as determined by the director.

(2) The director may determine the amount of Fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of Section R311-207-7, the Cost Guidelines document, or such other methods that are applicable to the item or task.

(3) As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate:

(a) performing abatement;

(b) investigation;

(c) site assessment;

(d) monitoring;

(e) corrective action activities;

(f) providing alternative drinking water supplies; and

(g) settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(2) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(3) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates

the Fund will reimburse the responsible party or consultant for the included items.

(4) If a claim that does not comply with the requirements of Rule R311-207 or the Cost Guidelines is returned by the director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(5) The ~~Petroleum Storage Tank Trust~~ Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the director.

(a) ~~The~~ the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates ~~in the rate schedule approved by the Director~~ and the materials at cost to the consultant. Material costs shall include:

(i) adjustments for all available discounts;

(ii) refunds;

(iii) rebates; and

(iv) allowances which the consultant reasonably should take under the circumstances; and ~~for~~

(v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) ~~In~~ in no event shall the price paid by the ~~Petroleum Storage Tank Trust~~ Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) ~~The~~ the consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices, or other documents acceptable to the director. ~~No reimbursement shall be made for undocumented labor hours and costs.~~

(d) ~~No~~ no reimbursement ~~shall~~ will be made for labor hours and costs associated with development, patenting, or marketing.

(6) The director may audit or commission an audit of records supporting request for reimbursement or payment at any time.

(a) audits may be determined by random selection or for specific reasons, including the suspicion or discovery of inaccuracies, or deficiencies in complying with regulations.

#### **R311-207-6. Subrogation.**

(1) When the State makes a payment from the Petroleum Storage Tank Trust Fund, the ~~State shall have~~ state has the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible.

(a) ~~The~~ the claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

#### **R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules, Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.**

(1) ~~This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund reimbursable activities.~~ Consultants must assign to one of the categories ~~listed in the table~~ identified in the Cost Guidelines, any

service time for an individual that is billed to a claimant or directly to the [PST] Fund and for which reimbursement is claimed [~~unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories~~].

(a) [By]by submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills, and experience.

(2) A consultant may file with the Director, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Director shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in confidence by and accessible only to the staff of the Director, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Director.

(3) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Director shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Director shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(4) The Director may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(e). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(e).

(5) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(e) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Director may approve all of the fees as proposed.

(6) The Director may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Director reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Director.

(7) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the average of allowable reimbursement rates will be presumed unreasonable.

(8) A claimant or consultant may overcome the presumption that a fee is unreasonable by presenting clear and

concise evidence to the Director that the fees are reasonable and customary. Excessive overhead factors will not meet this test.

(9) The Director may determine the amount of fund monies that will be reimbursed to a claimant for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(e), competitive bid, market survey or other applicable method as determined by the Director. Public comment will be taken before proposed reimbursement rates are adopted.]

(2) Materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.

(3) Costs not identified in the Cost Guidelines must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

**R311-207-8. Third Party Claims Apportionment.**

(1) To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419([5]Z)(a), [yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed,]the [Director]director may utilize budget projections to allocate coverage available for the payment of third party claims prior to a determination that corrective action has been properly performed and completed.

(a) [The Director]the director may amend budget projections as frequently as [he deems]deemed appropriate.

(2) Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the [state risk manager]State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based [upon]on the order in which an approved and agreed upon claim is received by the [Director]director.

**R311-207-9. Consultants Hired by Third Parties.**

(1) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(c) [shall]must:

(a) have an approved [PST]Petroleum Storage Tank Trust Fund Statement of Qualification in accordance with Subsection R311-207-3([e]3)[7]; and

(b) [have approved PST Trust Fund]charge labor rates in accordance with Section R311-207-7.

(2) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release.

(a) [The]the designation shall be made in writing to the [Director]director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(c):

(a) all work plans and budgets [shall]must be pre-approved by the [Director]director in accordance with Subsection R311-207-3([j]10);

(b) the consultant [shall]must comply with Sections R311-207-4 and R311-207-5; and

(c) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3([h]8) and R311-207-3([i]9).

**KEY: financial responsibility, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: 2021|October 17, 2011|**



Notice of Continuation: March 27, 2017  
 Authorizing, and Implemented or Interpreted Law: 19-6-105;  
 19-6-403; 19-6-409; 19-6-419

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-208	Filing ID 53585

#### Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule or section catchline:</b>
R311-208. Underground Storage Tank Penalty Guidance
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The amendment combines two sentences in order to clarify intent.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The change to Subsection R311-208-5(2)(b)(i) changes "Good faith takes into account" to "taking into account" to clarify intent.
The changes update this rule and ACT references, as applicable.
The changes update punctuation, capitalization, structure, and word selection to better reflect rulewriting standards

recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

###### B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

###### 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 any fiscal impact on other individuals' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

###### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule change is not expected to have any fiscal impact on revenues or expenditures of affected persons because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are minor corrections and clarifications. Kim Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelly, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-403    Section 19-6-425    Section 19-6-404

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

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

<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-208. Underground Storage Tank Penalty Guidance.**

**R311-208-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-208-2. Underground Storage Tank Penalty Criteria.**

(1) This guidance provides criteria to the ~~Director~~director in implementing penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425, and any other Sections authorizing the ~~Director~~director to seek penalties.

(2) The procedures in Rule R311-208 are intended solely for the guidance of the ~~Director~~director and are not intended, and cannot be relied upon, to create a cause of action against the State.

(3) This guidance and ensuing criteria ~~is~~are intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

**R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.**

(1) The ~~Director~~director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in ~~Section~~Subsection 19-1-102(3):

(a) ~~Payment~~payment of the penalty may be extended based on a person's inability to pay[-];

(i) ~~This~~this should be distinguished from a person's unwillingness to pay.

(ii) ~~[In]~~ cases of financial hardship, the ~~[Director]~~director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(b) ~~[Without]~~without regard to financial hardship, the ~~[Director]~~director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the ~~[Director]~~director; or

(c) ~~[In]~~in some cases, the ~~[Director]~~director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the ~~[Director]~~director. The following criteria shall be used in determining the eligibility of such projects:

(i) ~~[The]~~the project must be in addition to all regulatory compliance obligations;

(ii) ~~[The]~~the project preferably should closely address the environmental effects of the violation;

(iii) ~~[The]~~the actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(iv) ~~[The]~~the project must primarily benefit the environment rather than benefit the violator;

(v) ~~[The]~~the project must be judicially enforceable; and

(vi) ~~[The]~~the project must not generate positive public perception for violations of the law.

**R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.**

(1) Where the ~~[Director]~~director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

(a) ~~[A]~~a facility's certificate of compliance recently lapsed and product has been delivered~~[-]; or~~

(b) ~~[A]~~a facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the ~~[Director]~~director.

(2) The ~~[Director]~~director may assess a penalty against each violator involved in an illegal delivery occurrence.

~~(a) [If]if a violator is operating as [an owner/operator and deliverer]a deliverer and an owner or operator, the violator may be assessed a penalty in each capacity.~~

**R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.**

(1) Under Section 19-6-425, the court establishes penalty amounts rather than the ~~[Director]~~director.

~~(a) [Nonetheless]nonetheless, the [Director]director may enter a stipulated penalty agreement with the violator.~~

(2) The ~~[Director]~~director shall consider the following factors when negotiating or calculating a penalty to promote a more swift resolution of environmental problems and promote compliance:

(a) ~~[Economic]economic~~ benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(b) ~~[Gravity]gravity~~ of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(i) ~~[The]~~degree of cooperation or noncooperation and good faith efforts to comply~~[—Good faith takes into account], taking into account~~ the openness in dealing with the violations, promptness

in correction of problems, and the degree of cooperation with the ~~[State]state;~~

(ii) ~~[The]~~willfulness or negligence of the violation;

(iii) ~~[The]~~history of compliance or noncompliance; and

(iv) ~~[Other]other~~ unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

(c) ~~[Environmental]environmental~~ sensitivity. The actual impact of the violation(s) that occurred.

(d) ~~[The]~~number of days of noncompliance.

(e) ~~[Response]response~~ and investigation costs incurred by the State and others.

(f) ~~[The]~~the possible deterrent effect of a penalty to prevent future violations.

(3) All cases involving major violations with actual or high-potential for harming public health or the environment, and all cases involving a history of repeat violations by the same violator will require a penalty as a part of any settlement, unless good cause is shown for not seeking a penalty.

(4) Where the ~~[Director]~~director determines that a penalty is appropriate under Section 19-6-425, the ~~[Director]~~director may negotiate the penalty based on the following categories and ranges:

(a) Major Violations: \$5,000 to \$10,000 per violation.

~~(i) [This]this category includes major deviations from the requirements of the rules or [Act]act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.~~

(b) Moderate Violations: \$2,000 to \$7,000 per violation.

~~(i) [This]this category includes moderate deviations from the requirements of the rules or [Act]act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.~~

(c) Minor Violations: Up to \$3,000 per violation.

~~(i) [This]this category includes slight deviations from the rules or [Act]act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.~~

(5) The ~~[Director]~~director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance Section to R311-208-5.

**KEY: penalties, petroleum, underground storage tanks[\*]  
Date of Enactment or Last Substantive Amendment:  
~~2021~~~~[September 16, 1996]~~  
Notice of Continuation: March 27, 2017  
Authorizing, and Implemented or Interpreted Law: 19-6-105;  
19-6**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-209	Filing ID 53586

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This amendment updates this rule to match statute and corrects rule and statute references.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The change to Subsection R311-209-2(1) removes language specifying release requirement pertaining to regulated UST. Statute change according to Section 19-6-405.7 allows funds to be used to conduct investigation of suspected releases.
This change updates this rule and ACT references, as applicable.
This change updates punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
This rule change is not expected to have any fiscal impact on other individuals' revenues or expenditures because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
This rule change is not expected to have any fiscal impact on revenues or expenditures of affected persons because all proposed changes are minor corrections and clarifications and does not change the business practices of any of the affected parties.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
These changes are updates to the rule references, punctuation, capitalization, structure and word selection to better reflect rulewriting standards recommended by the

Office of Administrative Rules. These changes do not alter the essence of this rule. Kim Shelley, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kim Shelly, has reviewed and approved this fiscal analysis.			

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-403	Section 19-6-420	Section 19-6-409
Section 19-6-404		

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
07/15/2021	02:00 PM	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

**10. This rule change MAY become effective on:** 10/29/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/20/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.**

**R311-209-1. Definitions.**

Definitions are found in [Section]Rule R311-200.

**R311-209-2. Use of [the]State Cleanup Appropriation.**

(1) The [Director]director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and [the State Cleanup Appropriation]state cleanup appropriations, as authorized by [Sections]Section 19-6-405.7[, 19-6-409(5)] and Subsection 19-6-424.5(9) respectively, when:

[ (1) The release is from a regulated UST,]  
 ([2]a) [The owner or operator]the release is not fully covered by the [Petroleum Storage Tank Trust Fund,]Environmental Assurance Program;

[(3]b) [The]the release is a direct or potential threat to human health or the environment[;]; and

[(4]c) [The]the owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in [Section]Rule R311-211[;]; or

[(5]d) [Other]other relevant factors are evident as determined by the [Director]director.

**R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and [the]State Cleanup Appropriations.**

(1) When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and [the State Cleanup Appropriation]state cleanup appropriations, the

NOTICES OF PROPOSED RULES

[Director]director shall give due emphasis to releases that present a threat to the public health or the environment on a case-by case basis using the following criteria:

- (1) [The]immediate or direct threat to public health or the environment[;];
- (2) [The]potential threat to public health or the environment[;];
- (3) [The]economic consideration and cost effectiveness of the action[;]; and
- (4) [The]technology available[;]; or
- (5) [Other]other relevant factors as determined by the [Director]director.

**R311-209-4. Recovery of Management and Oversight Expenses.**

(1) Beginning July 1, 2015, the [Director]director, in determining whether to recover management and oversight expenses pursuant to [Utah Code Ann.]Subsection 19-6-420(10), may consider the following factors:

- (a) [The]the responsible party's ability to pay; and
- (b) [Any]any other relevant factors the [Director]director determines to be appropriate.

(2) At any time before or after the [Director]director initiates collection of management and oversight expenses, the responsible party may apply [to the Director]for an exemption from paying these expenses.

(a) [The]the responsible party shall furnish all documentation and information in the form and manner as prescribed by the [Director]director in support of the application.

(b) [The Director]the director, in [his]their sole discretion, may grant an exemption based on the responsible party's application in consideration of the factors listed in Subsection R311-209-4([a]1).

**KEY: petroleum, underground storage tanks**  
**Date of Enactment or Last Substantive Amendment: 2021[October 10, 2014]**  
**Notice of Continuation: March 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-409; 19-6-420**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R311-212	Filing ID 53586

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Environmental Response and Remediation
<b>Building:</b>	Multi Agency State Office Building
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144840
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840

Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-212. Administration of the Petroleum Storage Tank Loan Program
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This amendment changes "Petroleum Storage Tank Trust Fund" to "Fund" which is consistent with the Underground Storage Tanks: Definitions; and clarifies the meaning of "replacing USTs" by adding the word "petroleum" to align with the statute.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the differences between the repealed rule and the reenacted rule):</b>
The change to Subsection R311-212-2(4) deletes "Petroleum Storage Tank Trust" and refers to it as "Fund" because Fund is defined in Subsection R311-200-1(b)(36) as Petroleum Storage Tank Trust; and changes "Underground Storage Tank" to "UST".
The change to Subsection R311-212-3(4) clarifies that the replacement refers to Installing and replacing "petroleum" USTs. Changes are also made so that this rule matches the statute.
The change updates this rule and ACT references, as applicable.
The change updates punctuation, capitalization, structure, and word selection to better reflect rulewriting standards recommended by the Office of Administrative Rules. These changes do not alter the essence of this rule.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.

<b>B) Local governments:</b>			
This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are minor corrections and clarifications, and does not change the business practices of any of the affected parties.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
This rule change is not expected to have any fiscal impact on other individuals' revenues or expenditures because all proposed changes are minor corrections and clarifications.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
No compliance costs are anticipated because all proposed changes are minor corrections and clarifications.			
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):			
The changes would not have a fiscal impact on businesses. All proposed changes to this rule are minor corrections and clarifications. Kim Shelley, Executive Director			
<b>6. A) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0

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

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-409	Section 19-6-403
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
<b>B) A public hearing (optional) will be held:</b>	
<b>On:</b>	<b>At:</b>
07/15/2021	02:00 PM
	MASOB, 195 N 1950 W, Salt Lake City, UT in Room 1015

<b>10. This rule change MAY become effective on:</b>	10/29/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Division Director	<b>Date:</b>	06/10/2021
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-212. Administration of the Petroleum Storage Tank Loan Program.**

**R311-212-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.**

(1) Application for a loan ~~shall~~ must be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9).

(a) ~~Loan~~ loan applications ~~shall~~ will be accepted during application periods designated by the ~~Director~~ director.

(2) At least one application period shall be designated each calendar year if, on January 1~~;~~:

(a) the current balance due for all outstanding loans is less than ~~twenty five per cent~~ 25% of the cash balance of the Petroleum Storage Tank Trust Fund~~;~~; and

(b) the cash balance of the ~~Petroleum Storage Tank Trust~~ Fund exceeds \$10,000,000.

(3) If the requirements of Subsections R311-212-2(~~b~~2)(~~+~~a) and ~~(+)~~R311-212-2(2)(b) are not met on January 1, but are met at a later time in the calendar year, the ~~Director~~ director may designate an application period.

(4) An open application period will close if:

(a) the current balance due for all outstanding loans exceeds ~~twenty five per cent~~ 25% of the cash balance of the ~~Petroleum Storage Tank Trust~~ Fund~~;~~; or

(b) the cash balance of the ~~Petroleum Storage Tank Trust~~ Fund is less than \$10,000,000.

(5) If an open application period closes as required by Subsection R311-212-2(~~d~~4), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(~~a~~1).

(6) Applications must be received by the ~~Director~~ director by 5:00 p.m. on the last day of the application period.

(7) Loan applications received outside the application period ~~shall~~ will be invalid.

**R311-212-3. Eligibility Review.**

(1) The ~~Director~~ director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5)~~;~~ 19-6-409(6), 19-6-409(7), and ~~through~~ 19-6-409(8).

(2) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must, for all facilities for which the applicant requests a loan~~;~~:

(a) demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking ~~underground storage tanks~~ USTs~~;~~; or

(b) must be able to achieve compliance with the loan proceeds.

(3) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(a) ~~The~~ the applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking ~~underground storage tanks~~ USTs;

(b) ~~All~~ all regulated ~~underground petroleum storage tanks~~ USTs owned by the applicant have met the requirements of ~~Section~~ Subsection 19-6-412(2) and have a current certificate of compliance;

(c) ~~The~~ the applicant has paid all ~~underground storage tank~~ UST registration fees, interest and penalties which have been assessed; and

(d) ~~The~~ the applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(4) To meet the requirements of ~~Section~~ Subsection 19-6-409(5), the loan request must be for the purpose of:

(a) ~~Upgrading~~ upgrading petroleum USTs;

(b) replacing petroleum USTs; or

(c) ~~Permanently~~ permanently closing USTs.

(5) ~~If~~ if an applicant requests a loan for closing USTs which will be replaced by above~~-~~ground storage tanks, the loan, if approved, will be only for closing the USTs.

(a) ~~The~~ the security pledged by the applicant for a loan to replace USTs with above~~-~~ground storage tanks ~~shall~~ will be subject to the limitations in R311-212-6.

**R311-212-4. Prioritization of Loan Applications.**

(1) When determined by the ~~Director~~ director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned.

(a) ~~Ten~~ ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(~~a~~)i) ~~The~~ the applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(~~b~~)ii) ~~The~~ the applicant's income is derived solely from operations at UST facilities.

(~~e~~)iii) ~~The~~ the applicant owns or operates no more than two facilities.

(~~d~~)iv) ~~The~~ the facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(~~e~~)v) ~~There~~ there are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(~~f~~)vi) ~~Loan~~ loan proceeds will be used solely for replacing or upgrading petroleum USTs.

(~~g~~)vii) ~~All~~ all USTs at the facility are greater than 15 years old.



(2)b) ~~One~~ one point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(3)2) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the ~~Director~~ director by any other method.

(4)3) Applications shall remain in priority order regardless of availability of funds until a new application period is declared.

(a) ~~When~~ when a new application period begins, priority order of applications which have not been reviewed terminates.

(4) An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through 19-6-409(8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

### R311-212-5. Loan Application Review.

(1) The applicant shall ensure that the loan application is complete.

(a) ~~The~~ the completed application with supporting documents ~~shall~~ must contain all information required by the application.

(2) If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(2)3) All costs incurred in processing the application ~~shall be the responsibility of and paid for by the applicant~~ including:

(a) appraisals~~[-]~~;

(b) title reports~~[-]~~; or

(c) UCC-1 releases ~~shall be the responsibility of and paid for by the applicant~~.

(i) ~~The Director~~ the director may require payment of costs in advance.

(ii) ~~The Director~~ the director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(3)4) The review and approval of the application shall be based on information provided by the applicant, and:

(a) review of any and all records and documents on file;

(b) verification of any and all information provided by the applicant;

(c) review of credit worthiness and security pledged; and

(d) review of a site construction work plan.

(4)5) The applicant must close the loan within 30 days after the ~~Director~~ director conveys the loan documents for the applicant's signature.

(a) ~~If~~ if the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply.

(b) ~~An~~ an exception to the 30~~-~~day period may be granted by the ~~Director~~ director if the closing is delayed due to circumstances beyond the applicant's control.

### R311-212-6. Security for Loans.

(1) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(a) ~~The~~ the loan amount may not be greater than 80 ~~percent~~ % of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position~~[-]~~; or

(b) ~~The~~ the loan amount may not be greater than 60 ~~percent~~ % of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(2) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(a) a current written appraisal, performed by a State of Utah certified appraiser;

(b) a current county tax assessment notice~~[-]~~; or

(c) other documentation acceptable to the ~~Director~~ director.

(3) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the ~~Director~~ director by a title company or appropriate professional person approved by the ~~Director~~ director.

(4) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department.

(a) ~~The Department shall~~ the director will accept no less than a second mortgage position on real property pledged for loan security.

(5) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(6) The applicant must provide a complete financial statement with cash flow projections for debt service.

(7) Above~~-~~ground storage tanks and real property on which they are located ~~shall~~ will not be acceptable as security.

(8) ~~Underground storage tanks~~ USTs and the real property on which they are located ~~shall~~ will not be acceptable as security unless:

(a) ~~The~~ the UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(b) ~~The~~ the applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in Section R311-212-3.

(i)2) If a loan is made without security, the maximum loan repayment period ~~shall~~ will be seven years.

### R311-212-7. Procedure for Making Loans.

(1) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the ~~Director~~ director.

(2) The ~~Director~~ director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins.

(a) ~~The~~ the initial disbursement shall be for the lesser of 40 ~~percent~~ % of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done.

(b) ~~Disbursement~~ disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the ~~Director~~ director.

(a)i) ~~If~~ if an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement.

(ii) ~~Disbursement~~ disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the ~~Director~~ director, following the initial disbursement.

NOTICES OF PROPOSED RULES

(~~b~~)c) [~~H~~]if work is not initiated or completed within the time periods established in Subsection R311-212-7(~~b~~2)(~~1~~a), the loan balance [~~shall~~]must be paid within 30 days of notice provided by the [~~Director~~]director.

(3) Loan proceeds [~~shall~~]may not be used to pay [~~underground storage tank~~]UST registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(4) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

**R311-212-8. Servicing the Loans.**

(1) The [~~Director~~]director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii).

(2) Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(~~2~~)a) [~~The~~]the initial installment payment shall be due on a date established by the [~~Director~~]director.

(b) [~~Subsequent~~]subsequent installment payments shall be due on the first day of each month.

(i) [~~A~~]a notice of payment and due date shall be sent for each subsequent payment.

(c) [~~Non receipt~~]non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(3) The [~~Director~~]director shall apply loan payments received first to penalty, next to interest and then to principal.

(4) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(5) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(6) The penalty for late loan payments shall be 10[~~percent~~]10% of the payment due.

(a) [~~The~~]the penalty shall be assessed and payable on payments received by the [~~Director~~]director more than five days after the due date.

(b) [~~A~~]a penalty shall be assessed only once on a given late payment.

(7) Payments [~~shall be~~]are considered received the day of the U.S. Postal Service post[-]mark date or [~~receipted~~]receipt date for payments delivered to the [~~Director~~]director by methods other than the U.S. Postal Service.

(8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(~~7~~)9) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(~~8~~)10) Releases of the [~~Director's~~]director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

**R311-212-9. Recovering on Defaulted Loans.**

(1) Loans may be considered in default when:

(a) two consecutive payments are past due by 30 days or more[~~5~~];

(b) when the applicant's ability to receive payments for claims against the [~~fund~~]Fund lapses[~~5~~]; or

(c) if the certificate of compliance lapses or is revoked.

(2) Lapsing under Subsection R311-206-7(~~e~~)5) [~~shall~~]will not be considered as grounds for default for USTs which are permanently closed.

(~~2~~)3) The [~~Director~~]director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(~~3~~)4) The [~~Director~~]director need not give notice of default prior to declaring the full amount due and payable.

(~~4~~)5) The borrower [~~shall be~~]is liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

**R311-212-10. Forms.**

(1) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the [~~Director~~]director for making loans.

- (a) Loan Application version 7/14/16
- (b) Balance Sheet version 7/29/14
- (c) Loan Agreement version 7/29/14
- (d) Corporate Authorization version 7/29/14
- (e) Promissory Note version 7/29/14
- (f) Extension and Modification of Promissory Note Agreement version 7/29/14
- (g) Security Agreement version 7/29/14
- (h) Hypothecation Agreement version 7/29/14
- (i) General Pledge Agreement version 7/29/14
- (j) Assignment version 7/29/14
- (k) Assignment of Account version 7/29/14
- (l) Trust Deed version 7/29/14
- (m) Trust Deed Note version 7/29/14
- (n) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(2) The [~~Director~~]director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process.

(3) The [~~Director~~]director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

**R311-212-11. Rules in Effect.**

(1) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: 2021[January 1, 2017]**

**Notice of Continuation: March 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-1-31	Filing ID 53604

**Agency Information**

1. Department:	Health
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<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-1-31. Withholding of Payments
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this change is to implement by rule the provisions of Section 6032 of the Deficit Reduction Act.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This amendment requires Medicaid providers to implements policies and procedures for detecting and preventing fraud, waste, and abuse in accordance with the Deficit Reduction Act. It also allows employee protections for whistleblowers.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as this change only clarifies current Medicaid policy. It neither affects member services nor provider reimbursement.
<b>B) Local governments:</b>
There is no impact on local governments because they neither reimburse nor monitor Medicaid providers.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this change only implements Medicaid policy by rule.

<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>																																								
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<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td><b>Total Fiscal Cost</b></td> <td><b>\$0</b></td> <td><b>\$0</b></td> <td><b>\$0</b></td> </tr> <tr> <td><b>Fiscal Benefits</b></td> <td></td> <td></td> <td></td> </tr> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>Fiscal Benefits</b>				State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0
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NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26-1-5	Section 26-18-3	Section 6032 of the Deficit Reduction Act
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

**10. This rule change MAY become effective on:** 08/09/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/15/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1. Utah Medicaid Program.**

**R414-1-31. Withholding of Payments.**

(1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider or contractor if:

(a) the provider or contractor fails to provide the requested information within 30 calendar days from the date of a written request for information; ~~or~~

(b) the provider or contractor has an outstanding balance owing the Department for any reason, ~~including, but not limited to, claims adjustments or a provider assessment;~~ or

(c) the provider or contractor receives more than \$5,000,000 in reimbursement annually from the Department and fails to comply with Section 6032 of the Deficit Reduction Act. The Department or the Utah Office of the Inspector General may determine a provider to be noncompliant if the provider cannot submit, upon request:

(i) an attestation of compliance with Section 6032 of the Deficit Reduction Act;

(ii) the provider's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(iii) an employee handbook containing a specific discussion of the rights of employees to be protected as whistleblowers and the provider's policies and procedures for detecting and preventing fraud, waste, and abuse.

(2) The Department shall provide written notice before withholding payments.

(3) When the Department rescinds withholding of payments to a provider or contractor, it will, without notice, resume payments according to the regular claims payment cycle.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~2021~~ ~~October 1, 2020~~

**Notice of Continuation:** February 15, 2017

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-2A-7</b>	<b>Filing ID</b> <b>53579</b>

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R414-2A-7. Limitations
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this change is to clarify Medicaid policy on deconditioning in inpatient hospital intensive physical rehabilitation facilities.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This amendment clarifies that Medicaid does not cover admission for deconditioning in inpatient hospital intensive physical rehabilitation facilities.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as this change only clarifies current Medicaid policy. It neither affects member services nor provider reimbursement.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund nor provide deconditioning services under the Medicaid program.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this change only clarifies current Medicaid policy. It neither affects member services nor provider reimbursement.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There is no impact on non-small businesses as this change only clarifies current Medicaid policy. It neither affects member services nor provider reimbursement.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There is no impact on Medicaid providers and Medicaid members as this change only clarifies current policy. It neither affects member services nor provider reimbursement.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

There are no compliance costs to a single Medicaid provider or Medicaid member as this change only clarifies current policy. It neither affects member services nor provider reimbursement.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

Businesses will see neither revenue nor cost as this change only clarifies current Medicaid policy. Richard G. Saunders, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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State Government	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

Richard G. Saunders, Executive Director

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26-1-5	Section 26-18-3	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/02/2021

<b>10. This rule change MAY become effective on:</b>	08/09/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/09/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-2A. Inpatient Hospital Services.**

**R414-2A-7. Limitations.**

Inpatient hospital care is limited to medical treatment of symptoms that lead to medical stabilization of the member. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

- (1) Detoxification for a substance use disorder in a hospital shall meet the criteria in the Department's evidence-based criteria tool for inpatient detoxification. The Department does not cover any lesser level of detoxification in an inpatient hospital. The standards for the evidence-based criteria tool shall be in accordance with Section R414-1-12.
- (2) Abortion procedures require prior authorization. Refer to Rule R414-1B.
- (3) Sterilization and hysterectomy procedures require prior authorization and must meet the requirements of 42 CFR 441, Subpart F.
- (4) Organ transplant services are governed by Rule R414-10A.
- (5) Take-home supplies, dressings, non-rental durable medical equipment, and drugs are included in the inpatient reimbursement.
- (6) Coverage of sleep studies requires sleep center accreditation through one of the following nationally recognized accreditation organizations:
  - (a) American Academy of Sleep Medicine (AASM);
  - (b) Accreditation Commission for Health Care (ACHC); or
  - (c) The Joint Commission (TJC).

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

(8) Medicaid does not cover inpatient services solely for pain management. Pain management is adjunct to other Medicaid services.

(9) Inpatient rehabilitation services require prior authorization.

(10) Observation services are limited to cases where observation and evaluation is required to establish a diagnosis and determine the appropriateness of an inpatient admission or discharge. Observation is used to monitor the member's condition, complete diagnostic testing to establish a definitive diagnosis and formulate the treatment plan.

(a) Medicaid covers observation services with a physician's written order that outlines specific medically necessary reasons for the service, such as the member requires more evaluation to determine the severity of illness through laboratory, imaging, or other diagnostic test, and an order to continue monitoring for clinical signs and symptoms to determine improving or declining health status.

(b) Outpatient procedures include an uneventful recovery period.

(i) Observation is used to monitor complications of outpatient procedures beyond an uneventful recovery period.

(c) Medicaid does not cover observation services for convenience of the hospital, member or family, or when awaiting transfer to another facility.

(d) When an ordered hospital inpatient admission improves to the point of discharge with a stay less than 24 hours, the admission is covered as inpatient when documentation supports the medical necessity.

(e) Inpatient admissions solely for observation or diagnostic evaluation do not qualify for reimbursement under the diagnosis-related group (DRG) system.

(11) Medicaid does not cover admission solely for the treatment of eating disorders.

(12) Medicaid does not cover non-physician psychosocial counseling outside of the DRG.

(13) An undocumented immigrant who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

(b) Medicaid does not cover prescriptions for a member who is eligible to receive emergency services only.

(14) Inpatient hospital intensive physical rehabilitation services are not covered when the condition and prognosis meet the requirements of placement into a long-term facility, skilled nursing facility, or outpatient rehabilitation service.

(15) ~~Medicaid does not cover [A] admission for deconditioning [that includes is not covered]~~ in an inpatient hospital intensive physical rehabilitation facility.

(16) Inpatient hospital intensive physical rehabilitation services for a member who has suffered a stroke or other cerebral vascular accident may be provided only when admission and therapy is initiated within the first 60 days after onset of the incident.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: ~~2021~~ ~~October 1, 2020~~**

Notice of Continuation: September 15, 2017  
 Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R426-4-200	Filing ID 53578

#### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Emergency Medical Services	
<b>Room no.:</b>	404	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142004	
<b>City, state and zip:</b>	Salt Lake City, UT 84004-2004	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Guy Dansie	801-560-1544	gdansie@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule or section catchline:</b>
R426-4-200. Licensed Ground Ambulance, Designated QRU, and Designated Nonemergency Secured Behavioral Health Transport Staffing
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Amendments change and clarify operational staffing requirements for licensed and designated Emergency Medical Services (EMS) providers.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The proposed rule amendments require licensed ground ambulance protocols for providers to respond to a patient scene with at least one person licensed at the EMS agency license or designation level, and one other person licensed at the EMS agency licensed or designation level or at a lower level. The amendment also clarifies the operational requirements for licensed ground ambulance protocols for providers that choose to implement lower level responses.

#### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No fiscal impact to the state budget. The amendments only impact licensed ground ambulance providers.
<b>B) Local governments:</b>
A slight fiscal impact to local governments that hold licenses for ground ambulances. The impact would be a slight cost savings for local governments that are able to reduce the number of required paramedics at a patient scene. Currently, there are 1,794 employed paramedics in urban areas where the two paramedics are required on a patient scene. The change could theoretically reduce the number required to 897. The paramedics could be replaced by Advanced Emergency Medical Technicians (AEMTs) or Emergency Medical Technicians (EMTs). The average pay of a Utah paramedic is approximately \$43,000. The average pay for an AEMT is approximately \$36,000, so an estimated cost savings could be as much as $897 \times \$7,000 = \$6,279,000$ . It is unlikely that EMS ground ambulance providers will replace existing paramedics due to the amendments since the current supply of available paramedics are not meeting the current demand.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
No fiscal impact to small businesses. The only small business owned and operated ground licensed ambulance provider currently has a staffing waiver that allows them to operate at the level in the proposed amendments.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
A slight fiscal impact to non-small businesses that hold licenses for ground ambulances. The impact would be a slight cost savings if non-small businesses choose to reduce the number of paramedics at a patient scene. Most non-small businesses have staffing waivers that allow them to operate at the level proposed in the amendments. Currently, there is one non-small business that does not have a staffing waiver. Currently, there are 58 employed paramedics where the two paramedics are required on a patient scene. The change could theoretically reduce the number required to 29. The paramedics could be replaced by AEMTs or EMTs. The average pay of a Utah paramedic is approximately \$43,000. The average pay for an AEMT is approximately \$36,000, so an estimated cost savings could be as much as $29 \times \$7,000 = \$203,000$ . It is unlikely that EMS ground ambulance providers will replace existing paramedics due to the amendments since the current supply of available paramedics are not meeting the current demand.

**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**):

Slight fiscal impacts to persons other than small businesses, non-small businesses, state, or local government entities. The impact would be a slight cost savings to them if they choose to reduce the number of required paramedics on a patient scene. The cost savings would be the typical pay difference between a paramedic compared to an AEMT or EMT. Typically, a paramedic is paid more than AEMTs or EMTs. There currently are no ground ambulance services in Utah that are in this category that are currently required to operate with two paramedics on scene.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no impacts to compliance costs for affected persons. This does not impact ambulance rates or other EMS fees for service.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There may be a minimum fiscal benefit to non-small businesses. Richard G. Saunders, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$6,279,000	\$6,279,000	\$6,279,000

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$203,000	\$203,000	\$203,000
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$6,482,000</b>	<b>\$6,482,000</b>	<b>\$6,482,000</b>
<b>Net Fiscal Benefits</b>	<b>\$6,482,000</b>	<b>\$6,482,000</b>	<b>\$6,482,000</b>

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

The Executive Director of Utah Department of Health, Richard G. Saunders has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Title 26, Chapter 8a		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/09/2021
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**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-4. Operations.**

**R426-4-200. Licensed Ground Ambulance, Designated QRU, and Designated Nonemergency Secured Behavioral Health Transport Staffing.**

(1) While responding to a call, each permitted QRV shall be staffed by at least one individual licensed at or above the provider's designated level of service.



(2) While responding to a call, each licensed ground ambulance shall be staffed with the following minimum complement of licensed personnel for the level of service described unless otherwise determined by local selective medical dispatch system protocols for a lower level response as described in the licensed ground ambulance provider's operational plan:

(a) ~~[Basic Life Support]~~ EMT ambulance: One EMT, and one EMT, AEMT, EMT-IA, or paramedic~~[two EMTs, AEMTs, or paramedics, or any combination thereof];~~

(b) AEMT ambulance: one AEMT and one EMT, AEMT, EMT-IA or paramedic;

~~[(c) EMT IA ambulance: one EMT IA and one EMT, AEMT, or Paramedic;]~~

~~[(d)](c)~~ Paramedic ambulance: one paramedic; and one EMT, AEMT, EMT-IA, or paramedic;

~~[(e)](d)~~ Paramedic Rescue (non-transport): one paramedic;

~~[(f)](c)~~ Paramedic inter-facility: one paramedic and one EMT, AEMT, EMT-IA, or paramedic; or

~~[(g)](f)~~ Paramedic tactical (non-transport): one paramedic.

(3) A ~~[paramedic]~~ licensed ground ambulance or ~~[paramedic provider shall deploy]~~ EMS provider shall deploy at least one licensed personnel at the appropriate level of service to the scene of a 911 call, [two paramedics to the scene of 911 calls for service requiring Advanced Life Support response, unless otherwise] as determined by local selective medical dispatch system protocols. It is required that ground ambulance responses have a minimum of two licensed personnel on scene of 911 calls.

(4) Transport of a patient from a scene to a hospital or patient receiving facility, or the transfer of a patient to another licensed ground ambulance provider shall be accomplished by two or more personnel licensed at a level deemed appropriate by the on-scene licensed providers. This shall be determined by a patient's medical condition and local EMS provider treatment protocols.

~~[(4)](5)~~ When providing care, responders not in a uniform shall display upon request their level of medical licensure.

~~[(5)](6)~~ Each licensed or designated provider shall maintain a personnel file for each licensed individual. The personnel file shall include records documenting the individual's qualifications, training, endorsements, certifications, licensure, immunizations, and continuing medical education.

~~[(6)](7)~~ A licensed individual may perform only to his licensed EMS provider level of service, even if the licensed EMS or designated provider is licensed or designated at a higher level of service.

~~[(7)](8)~~ During transport each designated nonemergency secured behavioral health transport vehicle shall be staffed with a minimum of two personnel, with at least one who has obtained required training as approved by Department policy for mental health patient de-escalation and American Heart Association cardiopulmonary resuscitation or equivalent.

**KEY: emergency medical services**

**Date of Enactment or Last Substantive Amendment:** 2021~~[September 11, 2019]~~

**Notice of Continuation:** October 9, 2018

**Authorizing, and Implemented or Interpreted Law:** 26-8a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R432-30	Filing ID 53605

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	4th Floor	
<b>Building:</b>	Cannon	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
Joel Hoffman	801-273-2804	jhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R432-30. Adjudicative Procedure
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this amendment is to change the adjudicative process from a formal hearing to an informal hearing. The process will be less restrictive for applicants and easier for providers to discuss concerns/issues with the Department of Health.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This amendment will change the adjudicative process from a formal hearing to an informal hearing. This is accomplished by adding informal proceeding language to the rule and removing sections that pertained only to formal proceedings.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
State government adjudicative procedure process was thoroughly reviewed. This change will not impact the current process, other than to make it informal. No change to the state budget is expected.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures. The adjudicative process is regulated by the state health department and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses which may be participating in the adjudicative process. The services provided remain the same, only informal, instead of the current formal process.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses which may be participating in the adjudicative process. The services provided remain the same, only informal, instead of the current formal 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**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to persons other than small business, non-small businesses, state, or local government entities because this amendment modifies the formality of the adjudicative process and therefore, would not add cost for persons, businesses, or local government entities.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies the formality of the adjudicative process and therefore, would not add cost for persons, businesses, or local government entities.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this amendment will not result in fiscal impact to businesses. Richard G. Saunders, Executive Director

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Title 26, Chapter 21		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/15/2021
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**R432. Health, Family Health and Preparedness, Licensing, R432-30. Adjudicative Procedure.**

**R432-30-1. Purpose.**

This rule is adopted pursuant to Title 26, Chapter 21.

**R432-30-2. Definitions.**

- (1) "Department" means the Utah Department of Health, Bureau of Licensing and Certification.
- (2) "Initial agency determination" means a decision by [d]Department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102.
- (3) "Notice of agency action" means [the formal] a written notice meeting the requirements of Subsection 63G-4-201(2) that the [d]Department issues to commence an adjudicative proceeding.
- (4) "Request for agency action" means [the formal] a written request meeting the requirements of Subsection 63G-4-201(3) that requests the [d]Department to commence an adjudicative proceeding.

**R432-30-3. Commencement of Adjudicative Proceedings.**

- (1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are informal adjudicative proceedings.
- (2) The Department may commence an adjudicative proceeding by sending [filing and serving] a notice of agency action in accordance with Subsection 63G-4-201(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.
- (3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63G-4-201(3) by completing the "Request for Administrative Review [Facility Licensing Request for Agency Action]" or the "Request for Agency Action" form and mailing or emailing [filing] the form to [with] the [d]Department. A Request for Administrative Review or Request for Agency Action shall be submitted within 25 calendar days of the mailing or emailing of the notice of agency action.

**[R432-30-4. Responses.**

- ~~(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.~~
  - ~~(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Section 63G-4-201(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.~~
  - ~~(3) The written response shall:~~
    - ~~(a) include the information specified in Subsection 63G-4-204(1);~~
    - ~~(b) be signed by the respondent or the respondent's representative; and~~
    - ~~(c) be filed with the Department during the time period specified in Subsection R432-30-4(1) or R432-30-4(2).~~
  - ~~(4) The respondent shall send one copy of the response by certified mail to each party.~~
  - ~~(5) A person who has filed a request for agency action and has received notice from the presiding officer under Section 63G-4-201(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.~~
  - ~~(6) The presiding officer upon motion of a party or upon the presiding officer's own motion may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.]~~
- R432-30-4. Procedures for Informal Adjudicative Proceedings.**
- (1) No answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.
  - (2) The presiding officer shall promptly review a request for agency action and shall:
    - (a) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;
    - (b) notify the requesting party in writing that the request is denied; or
    - (c) notify the requesting party that further proceedings are required to determine the agency's response to the request.
  - (3) The agency shall email any notice required by Subsection R432-30-4(2) to all parties.
    - (a) The notice shall include all information required by Subsection R432-30-4(2), including:
      - (i) the agency's file number or other reference number;
      - (ii) the name of the proceeding;
      - (iii) designating the proceeding as informal, in accordance with the provisions of Section R432-30-3, enacted under Sections 63G-4-202 and 63G-4-203;
      - (iv) a statement of the parties; right to request a hearing;
      - (v) the deadline for requesting a hearing under the agency's rules; and
      - (vi) the name, title, email, mailing address, and telephone number of the presiding officer.
    - (b) In any hearing, the parties named in the notice of agency action or the request for agency action shall be permitted to testify, present evidence, and comment on the issues.

- ~~(c) Hearings will be held only after timely notice to all parties.~~
- ~~(d) Discovery is prohibited, but the Department may issue subpoenas or other orders to compel production of necessary evidence.~~
- ~~(e) All parties shall have access to information contained in the Department's files and to all materials and information gathered in any investigation, to the extent permitted by law.~~
- ~~(f) All hearings shall be open to all parties.~~
- ~~(g) The agency may record any hearing.~~
- ~~(h) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.~~
- ~~(4) Nothing in Rule R432-30 restricts or precludes any investigative right or power given to an agency by statute.~~

**~~R432-30-5. Discovery.~~**

- ~~(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.~~
- ~~(2) The provisions of Rules 26, 27, 28, 29, 30, 32, 34, 36, and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.~~
  - ~~(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.~~
  - ~~(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.~~
  - ~~(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.~~
  - ~~(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.~~
  - ~~(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.~~
  - ~~(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.~~
  - ~~(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to R432-30-6.]~~

**~~R432-30-5. Decisions and Orders.~~**

- ~~(1) Within a reasonable time, not to exceed 30 days, after the close of an informal adjudicative proceeding, the presiding officer shall issue a recommended order in writing to the agency head or their designee that states the following:
 
  - ~~(a) the decision;~~
  - ~~(b) the reasons for the decision;~~
  - ~~(c) a notice of any right of administrative or judicial review available to the parties; and~~
  - ~~(d) the time limits for filing an appeal or requesting a review.~~~~
- ~~(2) In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head.~~
- ~~(3) The presiding officer's recommended decision and order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.~~

- ~~(4) The agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings.~~
- ~~(5) If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain a revised decision and reasons for the decision as needed, based on the record before the presiding officer and as may be supplemented before the agency head.~~
- ~~(6) A copy of the decision and order shall be promptly emailed to each of the parties at the email address provided to the Department.~~
- ~~(7) The decision and order shall be mailed to any party known to lack internet access or an email address, or who requests a paper copy.~~

**R432-30-6. Witnesses and Subpoenas.**

- (1) Each party is responsible for the presence of that party's witnesses at the hearing.
- (2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:
  - (a) the officer may issue the subpoena upon a party's motion supported by an affidavit showing sufficient need, or upon the officer's own motion;
  - (b) the party to whom the ~~[hearing]~~presiding officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served[-];
  - (c) every subpoena shall be issued by the presiding officer under the seal of the ~~[d]~~Department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place ~~[therein]~~specified in the subpoena; and[-]
  - (d) a supporting affidavit for a subpoena duces tecum for the production ~~[by a witness]~~of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing by a witness shall include the following:
    - (i) the name and address of the entity upon whom the subpoena is to be served;
    - (ii) a description of what the party seeks to have the witness bring;
    - (iii) an explanation showing ~~[of the materiality]~~how the subpoenaed items are material to ~~[the]~~issues involved in the hearing; and
    - (iv) a statement by the party that to the best of ~~[his]~~their knowledge the ~~[witness]~~person or entity being subpoenaed has such items in ~~[his]~~their possession or under ~~[his]~~their control.

**R432-30-7. Certificate of Service.**

~~[There shall appear on a]~~All documents required to be served shall include a certificate of service dated and signed by the party or ~~[his]~~their agent in substantially the following form:

I certify that I served the foregoing document upon all parties to this proceeding by delivering ~~[or mailing a copy with postage prepaid and properly addressed, [or causing to be delivered]]~~which may include email~~[a copy of it]~~ to: ~~[or]~~provide the name of the person receiving the document~~[)]~~.

**R432-30-8. Stays and Temporary Remedy.**

- (1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the [request]petition. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

**R432-30-9. Declaratory Orders.**

(1) Any person or agency may petition for a [d]Department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.

(2) Any person or agency may petition for a [d]Department declaratory ruling on orders issued by the Bureau of [Health Facility]Licensing and Certification[Licensure] in areas where the Health Facility Committee has statutory authority to issue orders by following the procedures outlined in Rule R380-5.

**KEY: health care facilities**

**Date of Enactment or Last Substantive Amendment:** 2021[~~March 3, 1995~~]

**Notice of Continuation:** March 21, 2019

**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-14 through 26-21-16

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-6	Filing ID 53588

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-6. Taking Upland Game

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):

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 the take of Upland Game.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The proposed amendments to this rule: 1) add Utah Lake Wetland Preserve to the list for Nontoxic shot use; 2) add Utah Lake Wetland Preserve to the list of Waterfowl Management area with firearm, crossbow, and archery tackle restrictions; and 3) add Utah Lake Wetland Preserve to the list of Waterfowl Management areas with dog restrictions.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The proposed rule amendments add Utah Lake Wetland Preserve to the already established list of Waterfowl Management areas with weapon and dog restrictions 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 amendments add an area to an already established list of Waterfowl Management areas with restrictions. This filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in taking upland game on waterfowl management units in the state because there is not a cost or service required of them.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

DWR has determined that this amendment will not create additional costs for those participating in the taking of Upland game in Utah because there is not a cost or service required with the implementation of this rule revision.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Brian Steed, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) 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.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Rory Reynolds, Division Director	<b>Date:</b>	06/14/2021
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**R657. Natural Resources, Wildlife Resources.**

**R657-6. Taking Upland Game.**

**R657-6-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-6-7. Nontoxic Shot.**

(1) Only nontoxic shot may be used to take Sandhill crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, ~~and~~ Timpie Springs, and Utah Lake Wetland Preserve.

**R657-6-9. Use of Firearms, Crossbows, and Archery Tackle on State Waterfowl Management Areas.**

(1) A person may not discharge a firearm, crossbow, or archery tackle on the Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs and Topaz Waterfowl Management areas, and Utah Lake Wetland Preserve, during any time of the year, except:

- (a) the use of authorized weapons as provided in Section [Utah Admin. Code] R657-9-7 during open waterfowl hunting seasons for lawful hunting activities;
- (b) as otherwise authorized by the Division in special use permit, certificate of registration, administrative rule, proclamation, or an order of the Wildlife Board; or
- (c) for lawful purposes of self-defense.

**R657-6-20. Use of Dogs.**

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve upland game during open upland game hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

- (a) ~~dogs~~ are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:
  - (i) Annabella;
  - (ii) Bear River Trenton Property Parcel;
  - (iii) Bicknell Bottoms;
  - (iv) Blue Lake;
  - (v) Browns Park;
  - (vi) Bud Phelps;
  - (vii) Clear Lake;
  - (viii) Desert Lake;
  - (ix) Farmington Bay;
  - (x) Harold S. Crane;
  - (xi) Hatt's Ranch
  - (xii) Howard Slough;
  - (xiii) Huntington;
  - (xiv) James Walter Fitzgerald;
  - (xv) Kevin Conway;
  - (xvi) Locomotive Springs;
  - (xvii) Manti Meadows;
  - (xviii) Mills Meadows;
  - (xix) Montes Creek;

- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Stewart Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) ~~Vernal~~ Utah Lake Wetland Preserve; ~~and~~
- (xxxiv) ~~Vernal~~; and
- (xxxv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

**KEY: wildlife, birds, rabbits, game laws**  
**Date of Enactment or Last Substantive Amendment:**  
**2021 [August 10, 2020]**  
**Notice of Continuation: May 18, 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.):	R657-39	Filing ID 53589

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	2110	
<b>Building:</b>	Natural Resources Salt Lake Complex	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing Address:</b>	PO Box 146301	
<b>City, state and zip</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R657-39. Wildlife Board and Regional Advisory Councils

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

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 public meetings.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

The proposed amendments to this rule establish a format for electronic meeting participation for Wildlife Board Members, Regional Advisory Council Members, DWR staff, and the public.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The proposed rule amendments allow for the use of an electronic meeting format to aid in conducting public meetings for the purpose of wildlife management. 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 amendments add an electronic element to an already established public input process, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the public input process for wildlife management in the state as a service or monetary fee is not connected with the rule revision.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

DWR has determined that this amendment will not create additional costs for those participating in the public meeting process in Utah because a service or monetary fee is not required.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Brian Steed, Executive Director

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0



Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 23-14-2	Subsection 23-14-2.6(7)	Section 12-14-3
Section 23-14-19		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/02/2021

<b>10. This rule change MAY become effective on:</b>	08/09/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Rory Reynolds, Division Director	<b>Date:</b>	06/14/2021
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**R657. Natural Resources, Wildlife Resources.  
R657-39. Wildlife Board and Regional Advisory Councils.  
R657-39-1. Purpose and Authority.**

This rule is established under the authority of Sections 23-14-2, 23-14-2.6~~(7)~~, 23-14-3, and 23-14-19 to provide the standards and procedures for the operation of the Wildlife Board and regional advisory councils.

**R657-39-6. ~~Wildlife Board~~ Electronic Meetings.**

(1) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Wildlife Board and Regional Advisory Council meetings by electronic means.

(2) The following provisions govern any meeting at which one or more Wildlife Board or Regional Advisory Council members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more board or council members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the ~~board members participating in the meeting~~ platform that the public can use to submit public comments electronically and ~~how they will be connected to~~ attend the meeting remotely by electronic means;

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice Website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

~~[These notices shall be provided at least 24 hours before the meetings.]~~

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

(d) When notice is given of the possibility of a board or council member appearing electronically or telephonically, any ~~board~~ member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter ~~coming before the board~~.

(i) In addition to identifying board or council members physically present at the meeting, [A] at the commencement of the meeting, or at such time as any board or council member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by board or council members ~~[of the board]~~ who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**R657-39-7. ~~Wildlife Board~~ Emergency Meetings.**

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Subsections 52-4-202(1) cannot be met. Pursuant to Subsection 52-4-202(5), the notice requirements in Subsection 52-4-202(1) may be disregarded when ~~unforeseen~~ unforeseen circumstances require the

NOTICES OF PROPOSED RULES

[wildlife board]Wildlife Board or Regional Advisory Councils to meet and consider matters of an emergency or urgent nature.

(2) The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all [of the]board or council members[~~of the board~~] of the proposed meeting and a majority of the convened members vote in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Posting of the date, time, and place of the meeting and the topics to be considered:

- (A) at the offices of the division;
- (B) on the division's web page; and
- (C) at the location where the emergency meeting will be held.

(ii) If members of the board or council appear electronically or telephonically, notice shall comply with the requirements of Subsection R657-39-6(2) to the extent practicable.

(c) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the board or council shall affirmatively state and find what unforeseen circumstances have rendered it necessary[~~for the board~~] to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of [Utah Code]Section 52-4-202 could not be followed.

**KEY: terms of office, public meetings, regional advisory councils**  
**Date of Enactment or Last Substantive Amendment: 2021|October 22, 2009|**

**Notice of Continuation: November 10, 2020**

**Authorizing, and Implemented or Interpreted Law: 23-14-2.6(7); 23-14-19**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R714-560	Filing ID 53610

**Agency Information**

<b>1. Department:</b>	Public Safety	
<b>Agency:</b>	Highway Patrol	
<b>Building:</b>	Calvin Rampton Complex	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84129-5994	
<b>Mailing address:</b>	PO Box 141100	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1100	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

**2. Rule or section catchline:**  
 R714-560. Technology and Equipment for Officer-Involved Critical Incident Investigation

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

This rule filing is being submitted as a result of the passage of S.B. 68 during the 2021 General Session. The purpose of this rule is to create a program to assist law enforcement agencies through monetary grants to purchase technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm in accordance with Section 53-1-121.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

This rule:  
 1) establishes the Technology and Equipment for Officer-Involved Critical Incident Investigation Committee, which shall be responsible for assisting the Department of Public Safety in awarding funds to purchase equipment in accordance with Section 53-1-12;  
 2) requires that the committee meet at least quarterly to review and approve applications from law enforcement for matching grant funding for the purchase of technology or equipment;  
 3) establishes criteria for evaluation of equipment to determine eligibility for reimbursement of funds to law enforcement agencies;  
 4) establishes a process for law enforcement agencies to apply for matching funds for the purchase of equipment and technology in compliance with Section 53-1-121; and  
 5) outlines accountability requirements for law enforcement agencies that are awarded funds.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The Highway Patrol anticipates a cost of \$40,000 to the state in administrative costs associated with the review of grant funding applications from local law enforcement entities, and the awarding of grant funding for the purchase of approved equipment and technology.

The Utah Legislature appropriated \$460,000 to provide matching grant funding for law enforcement entities for the purchase of qualifying equipment or technology as outlined in Section 53-1-121 to assist in the investigation of officer-involved critical incidents involving a firearm. In addition, \$40,000 was appropriated to cover the costs of administering the grant program through the Department of Public Safety.

**B) Local governments:**

The Highway Patrol anticipates a cost savings of \$460,000 to local governments. Local law enforcement entities will have the ability to apply for matching funding from the \$460,000 appropriation in order to obtain reimbursement for costs associated with the purchase of equipment or technology to assist in the investigation of officer-involved critical incidents involving a firearm. Local law enforcement entities will submit an application for approval of grant funding awards, and once approved will pay the costs for purchases up front, and will be reimbursed for 50% of the total amount paid for approved equipment or technology.

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

The Highway Patrol anticipates that there are two small businesses that either have, or will have in the very near future, equipment and technology available that will meet the requirements outlined in Section 53-1-121. Under the grant program created in Section 53-1-121, these businesses will have a potential to sell qualifying technology and equipment to law enforcement entities in the amount of \$920,000 with the combination of the \$460,000 in grant funding appropriated by the legislature, and the matching funding of \$460,000 provided by the law enforcement entities.

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

There is no anticipated cost or savings to non-small businesses because the Highway Patrol is not aware of any non-small businesses that have, or will have, equipment and technology available that will meet the requirements outlined in Section 53-1-121.

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

There is no anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities because this rule identifies the process for a law enforcement entity to seek grant matching funding for the purchase of technology or equipment to assist in the investigation of officer-involved critical incidents involving a firearm.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons because this rule identifies the process for a law enforcement entity to seek grant matching funding for the purchase of technology or equipment to assist in the investigation of officer-involved critical incidents involving a firearm.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Businesses that produce technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm as specified under Section 53-1-121 will have the ability to receive up to \$460,000 in grant funds and \$460,000 in matching law enforcement entity funds, for a total of \$920,000, for the sale of approved technology and equipment. Jess L. Anderson, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$40,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$460,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$40,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$460,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 53-1-121		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Rapich, Colonel UHP	<b>Date:</b>	06/15/2021
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**R714. Public Safety, Highway Patrol.**  
**R714-560. Technology and Equipment for Officer-Involved Critical Incident Investigation.**

**R714-560-1. Purpose.**

(1) The purpose of this rule is to create a program to assist law enforcement agencies through monetary grants to purchase technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm in accordance with Section 53-1-121.

**R714-560-2. Authority.**

This rule is authorized by Section 53-1-121.

**R714-560-3. Definitions.**

(1) Terms used in this rule are found in Section 53-1-102.

(2) In addition:

(a) "committee" means the Technology and Equipment for Officer-Involved Critical Incident Investigation Committee established under this rule; and

(b) "equipment" means technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm that meets the criteria specified in Section 53-1-121.

**R714-560-4. Technology and Equipment for Officer-Involved Critical Incident Investigation Committee.**

This rule establishes the Technology and Equipment for Officer-Involved Critical Incident Investigation Committee, which shall be responsible for assisting the department in awarding funds to purchase equipment in accordance with Section 53-1-121.

**R714-560-5. Committee Membership.**

(1) The committee shall consist of six members made up of one representative from each of the following groups or organizations:

(a) Utah Highway Patrol Colonel or designee;

(b) Utah Highway Patrol, Training Section;

(c) Utah Attorney General's Office;

(d) Utah Sheriffs Association;

(e) Utah Chiefs of Police Association;

(f) Statewide Association of Prosecutors;

(2) Members of the committee shall:

(a) be approved by the Commissioner of the Utah Department of Public Safety;

(b) be appointed for four year terms; and

(c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the same group or organization to complete the term of that member.

(4) The committee shall select a chairman and vice-chairman from among its members.

(5) Four members shall constitute a quorum for committee action.

(6) The department's special counsel shall assist the committee as needed.

**R714-560-6. Committee Meetings.**

The committee shall meet at least quarterly for the purpose of reviewing and approving applications from law enforcement agencies.

**R714-560-7. Applications.**

(1) Applications for the funding of equipment shall be:

(a) made on department forms;

(b) mailed to the committee in care of the department;

(c) submitted no later than October 31, 2021; and

(d) submitted prior to the purchase of technology or equipment.

**R714-560-8. Criteria and Awards.**

(1) The committee shall:

(a) evaluate equipment as it becomes available to determine if it meets requirements set forth under Section 53-1-121;

(b) review timely applications submitted by law enforcement agencies as described in Subsection R714-560-7;

(c) approve funding awards equitably to law enforcement agencies that have submitted completed applications for the purchase of approved equipment; and

(d) notify each law enforcement agency that submitted an application of:

(i) the approval or denial of the application for funding; and

(ii) the amount of funding that will be made available to the law enforcement agency for the purchase of equipment.

(2) In order receive awarded funds for the purchase of equipment, the law enforcement agency shall submit to the committee:

(a) a completed request for reimbursement form for the amount awarded to the law enforcement agency by the committee; and

(b) an invoice for the purchase of equipment that has been approved by the committee.

**R714-560-9. Agency Accountability.**

Law enforcement agencies that receive funding shall:

- (a) use the awarded resources only in the manner set forth in the agency's application;
- (b) use the awarded resources only to purchase technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm;
- (c) maintain records for five years sufficient to show how the funding is used; and
- (d) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding.

**KEY: technology, equipment, officer involved critical incident**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 53-1-121**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R765-209	Filing ID 53590

**Agency Information**

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Regents Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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**

<b>2. Rule or section catchline:</b>
R765-209. Institutional Civil Liberties Policy Review
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This new rule is based on Rule R945-2 and is needed as a result of S.B. 111 passed in the 2020 General Session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>

This new rule is similar to Rule R945-2, except that the label for the agency is changed from "UTech Board of Trustees" to "Higher Education (Utah Board of)." In addition, this new rule changes Rule R945-2 to be consistent with the changes that were made to the UTech Board as a result of S.B. 111 (2020).

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

Enactment of this rule likely will not materially impact state revenue because this rule applies only to students in the state system of higher education.

**B) Local governments:**

Enactment of this rule likely 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 rule likely 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 rule likely 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 rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities who are not students in the state system of higher education. For students in the state system of higher education, this rule provides a process that a student may follow to challenge an institution's policies. This rule does not impose a regulatory burden on the student.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

This rule does not create any compliance costs for affected persons since it makes this rule consistent throughout the state system of higher education.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule affects students in the state system of higher education and has no fiscal impact on businesses. David R. Woolstenhulme, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 53B-27-303		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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**10. This rule change MAY become effective on:** 08/09/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	06/14/2021
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**R765. Higher Education (Utah Board of) Administration.**

**R765-209. Institutional Civil Liberties Policy Review.**

**R765-209-1. Purpose.**

This rule establishes the procedure whereby a student enrolled in a Utah System of Higher Education institution may submit a complaint to the Utah Board of Higher Education alleging a policy of the institution directly affects one or more of the student's civil liberties.

**R765-209-2. Authority.**

This rule is authorized by Section 53B-27-303.

**R765-209-3. Definitions.**

(1) "Board" means Utah Board of Higher Education.

(2) "Civil liberty" means a civil liberty enumerated in the United States Constitution or the Utah Constitution.

(3) "USHE institution" means an institution in the state's system of higher education described in Section 53B-2-101.

**R765-209-4. Complaint Process.**

(1) A student enrolled in a USHE institution may submit a complaint to the board alleging a policy of the institution directly affects one or more of the student's civil liberties.

(2) To file a complaint, a student shall send a written request that identifies the policy for which a review is requested to the Office of the Commissioner of Higher Education. The Office of the Commissioner of Higher Education shall forward the request to the board chair.

(3) Within 30 days after the day on which the complaint is received by the Office of the Commissioner of Higher Education, the board shall evaluate the petition to determine whether the complaint is made in good faith.

(a) If the board determines that the complaint is made in good faith, it shall direct the institution against which the complaint is made to initiate rulemaking proceedings for the challenged policy.

(b) If the board determines that the complaint is made in bad faith, it shall dismiss the complaint.

(4) If the board directs an institution to initiate rulemaking proceedings for a challenged policy in accordance with this section, the institution shall initiate rulemaking proceedings for the policy within 60 days after the day on which the direction was given.

**KEY: civil liberty, technical college, technical education**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 53B-27-303**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-431	Filing ID 53603

**Agency Information**

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Regents Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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**

<b>2. Rule or section catchline:</b>
R765-431. State Authorization Reciprocity Agreement Rule
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for filing this amendment is to add two additional requirements for institutions that desire to participate in the State Authorization Reciprocity Agreement (SARA) administered by NC-SARA. In addition, the label of the agency needs to be renamed in the Utah Administrative Code to comply with S.B. 111 passed in the 2020 General Session.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The amendment requires institutions to provide the following additional evidence: 1) evidence that the institution has disaster recovery protocols for protection of student records; and 2) evidence of tuition assurance funds, surety bonds, teach-out provisions, or other assurances to meet the institutions obligations to its students. 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. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

Enactment of this amendment likely will not materially impact state revenue because this rule applies only to institutions that register to participate in SARA.

**B) Local governments:**

Enactment of this amendment likely will not materially impact local governments' revenue because this rule applies only to institutions that register to participate in SARA.

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

Enactment of this amendment likely will not result in direct expenditures from tax or fee changes for small businesses. This rule applies only to institutions that register to participate in SARA and any additional burden that may result is inestimable.

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

Enactment of this amendment likely will not result in direct expenditures from tax or fee changes for non-small businesses. This rule applies only to institutions that register to participate in SARA and any additional burden that may result is inestimable.

**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 amendment likely will not result in direct expenditures from tax or fee changes for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to institutions that register to participate in SARA.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The amendment requires the institutions that register to participate in SARA to provide the commissioner's office with additional evidence of their fiscal and operations strength. The cost of providing this additional documentation depends on the institution's operations and is inestimable.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The amendment affects only the institutions that register with the Commissioner's Office to participate in SARA and has no fiscal impact on other businesses. David R. Woostenhulme, Commissioner

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of Higher Education, David R. Woostenhulme, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 53B-16-109		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	06/15/2021
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**R765. ~~Regents~~ Higher Education (Utah Board of) Administration.**

**R765-431. State Authorization Reciprocity Agreement Rule.**

**R765-431-1. Purpose and Authority.**

The purpose of this rule is [F]to administer a state authorization reciprocity agreement as authorized by Section 53B-16-109.

**R765-431-2. Definitions.**

In addition to the definitions set forth in Subsection 53B-16-109(1), the following definitions shall apply to this [R]rule[-]:

(1) "OCHE" [shall]means the Office of the Commissioner of Higher Education.

(2) "NC-SARA" [shall]means the National Council for State Authorization Reciprocity Agreements.

(3) "SARA" [shall]means the State Authorization Reciprocity Agreement overseen by NC-SARA and administered by four regional higher education compacts, including WICHE.



(4) "SARA portal agency" ~~shall~~ means the single agency designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints, and other communications.

(5) "WICHE" ~~shall~~ means the Western Interstate Commission for Higher Education.

**R765-431-3. Applications for Institutional Participation in SARA.**

(1) An [F]institution[s] desiring to participate in SARA shall submit to OCHE the following:

(a) [A] completed Application and Approval Form for Institutional Participation in SARA that is approved by NC-SARA;

(b) [P]payment of the fee established by OCHE for administering SARA; and

(c) [F]the following documents verifying the statements made in the application:

(i) [E]vidence supporting the [F]institution's statement that its principal campus or central administrative unit is located in Utah and that it is authorized to operate in Utah;

(ii) [E]vidence supporting the [F]institution's statement that it is a degree-granting institution that is accredited by an accrediting body recognized by the U.S. Secretary of Education;

(iii) evidence that the institution has disaster recovery protocols for protection of student records;

~~(iii)~~(iv) [E]vidence showing[-]:  
 (1)A each student[s] ~~are~~is informed, before completing the enrollment process for an online course or program, of the student consumer complaint processes available to ~~them;~~the student; and[-]  
 (2)B the student complaint processes are clearly defined and can be used electronically;

~~(iv)~~(v) [E]vidence showing that each student[s] ~~are~~is informed, before completing the enrollment process for an online course or program that customarily leads to professional licensure, whether or not the course or program meets licensure requirements in the state where the student resides or, if unknown, each student[s] ~~are~~is provided the contact information for the appropriate state licensing board~~s~~ or boards; ~~and~~

(vi) evidence of tuition assurance funds, surety bonds, teach-out provisions, or other assurances that OCHE deems sufficient to protect students that shows that the institution is capable of fulfilling its obligation to provide a reasonable alternative for delivering the instruction or reimbursement of reasonable compensation in the event the institution cannot fully deliver the instruction for which the students have contracted; and

~~(v)~~(vii) [F]for a non-public [F]institution[s], evidence of the [F]institution's financial responsibility index score from the Department of Education that is 1.5 or above, or if its score is between 1.0 and 1.5, evidence that the [F]institution has obtained the surety required in Section R765-431-4. A [N]non-public [F]institutions with a score below 1.0 ~~will~~may not be eligible to participate in SARA.

(2) Institutions desiring to continue participating in SARA after one year of the initial application shall submit to OCHE annually thereafter the following:

(a) [A] completed Renewal Application for Institutional Participation in SARA that is approved by NC-SARA within 30 days of receipt of notice for opportunity to renew from NC-SARA;

(b) [P]payment of the fee established by OCHE for administering SARA; and

(c) [F]the following documents verifying the statements made in the application:

(i) [E]vidence that the [F]institution's principal campus or central administrative unit remains located in Utah and that the [F]institution continues to be authorized to operate in Utah;

(ii) [E]vidence that the [F]institution retains its accreditation by an accrediting body recognized by the U.S. Secretary of Education; and

(iii) [F]for a non-public [F]institution[s], evidence of the [F]institution's financial responsibility index score from the Department of Education.

(3) OCHE shall notify the [F]institution no later than 30 days after receipt of the initial or renewal application of its decision to approve, deny, or return the application for further information.

(4) If an [F]institution's initial or renewal application is denied, OCHE shall provide to the applicant a written reason for the denial.

(5) If any information contained in the initial or renewal application becomes incorrect or incomplete while it is in effect, the [F]institution shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by OCHE.

**R765-431-4. Surety Requirements for An Institution[s] with a Low Financial Responsibility Index Score.**

(1) An [F]institution with a financial responsibility index score from the Department of Education between 1.0 and 1.5 shall satisfy the requirement that it is sufficiently financially stable to participate in SARA by submitting with its application a surety in the form of a bond, certificate of deposit, or irrevocable letter of credit.

(2) The amount of the surety shall be:

(a) \$187,500 for an [F]institution[s] expecting to enroll more than 100 separate individual students, which are [C]non-duplicated enrollments], during the year it is applying to participate in SARA;

(b) \$125,000 for an [F]institutions expecting to enroll between 50 and 99 separate individual students during the year it is applying to participate in SARA;

(c) \$62,500 for an [F]institutions expecting to enroll less than 50 separate individual students during the year it is applying to participate in SARA; and

(d) \$12,500 for an [F]institution that is able to establish that its gross tuition income from any source during the year it is applying to participate in SARA will be less than \$25,000.

(3) The obligation of the surety ~~will~~shall be that the [F]institution, its officers, agents, and employees will:

(a) faithfully perform the terms and conditions of its application to participate in SARA; and

(b) conform to the standards and requirements required for participation in SARA.

(4) The bond, certificate of deposit, or letter of credit shall be in a form approved by OCHE and issued by a company authorized to do such business in Utah.

(5) The bond, certificate of deposit, or letter of credit shall be payable to OCHE to be used to satisfy any costs, losses, or damages resulting from the [F]institution's failure to meet any of its obligations as a participant in SARA.

(6) The surety company may not be relieved of liability on the surety unless it gives the [F]institution and OCHE 90 calendar days' notice by certified mail of the company's intent to cancel the surety.

NOTICES OF PROPOSED RULES

(7) If at any time the company that issued the surety cancels or discontinues the coverage, the [F]institution's eligibility to participate in SARA is automatically revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained on or before the cancellation date of the original coverage and provided to OCHE.

**R765-431-5. Revocation of Eligibility to Participate in SARA.**

(1) An [F]institution's eligibility to participate in SARA may be revoked by OCHE upon its finding that:

- (a) the [F]institution's application contains material representations which are incomplete, improper, or incorrect;
- (b) the [F]institution failed to perform as represented in its applications;
- (c) the [F]institution violated any of the policies and procedures of OCHE as they relate to SARA;
- (d) the [F]institution violated any of the policies and procedures of NC-SARA or any of the four regional compacts administering SARA;
- (e) the [F]institution failed to maintain an adequate financial responsibility index score from the Department of Education;
- (f) the [F]institution has engaged in any dishonest or fraudulent activity; or
- (g) the [F]institution failed to comply with any laws in this state or another state that affect its ability to continue doing business in Utah.

(2) The revocation of the eligibility of an [F]institution shall be made in accordance with the procedures set forth in [UT Admin.]Section R765-134. A hearing is not required.

**R765-431-6. Request for Review.**

(1) An [F]institution[s] shall have the right to submit to OCHE a [R]request for [R]review regarding a decision to deny the [F]institution's application or to revoke the [F]institution's eligibility to participate in SARA.

(2) The [R]request[s] for [R]review shall be postmarked within 10 days of the date of notification of the adverse decision.

(3) The [R]requests for [R]review [will]shall be reviewed and decided by a review committee appointed by the Commissioner of Higher Education.

(4) At the time the [R]request for [R]review is made, the [F]institution shall provide evidence to the review committee that the adverse decision was made in error.

(5) The decision of the review committee shall be made in accordance with the procedures set forth in [UT Admin.]Rule R765-134. A hearing is not required.

(6) The decision of the review committee shall be the final institutional action. An [F]institution may request judicial review of the review committee's decision in accordance with [UT Admin.]Rule R765-134.

~~(7) The Institution may also request that WICHE review an adverse decision to see whether the SARA policies and standards were upheld during the review process.~~

**R765-431-7. Consumer Complaints.**

(1) ~~[Filing Complaints.]~~Before filing a complaint with OCHE against an [F]institution, an individual must first work through the [F]institution's complaint process. To file a complaint against an [F]institution, an individual shall submit to OCHE:

- (a) a completed complaint form as provided by OCHE; or

(b) a letter signed by the complainant, and include the following:

- (i) ~~[all]any~~ documentary evidence relating to the facts of the complaint;
- (ii) evidence of the [F]institution's resolution of the complaint; and
- (iii) contact information for the complainant.

(2) ~~[Complaint Resolution.]~~OCHE may refer the complaints it receives to one or more of the following entities for resolution as it deems appropriate:

- (a) the [F]institution complained against;
- (b) the SARA portal agency in the home state of a non-Utah [F]institution complained against; and
- (c) the Utah Division of Consumer Protection or other law enforcement agency.

(3) ~~[Action to Revoke Based on Consumer Complaint.]~~OCHE may take action, in accordance with [UT Admin.]Section R765-431-5, to revoke an [F]institution's eligibility to participate in SARA based on a consumer complaint that is received within two years of the incident complained of.

**KEY: State Authorization Reciprocity Agreement (SARA), NC-SARA**

**Date of Enactment or Last Substantive Amendment: 2021 [December 12, 2016]**

**Authorizing, and Implemented or Interpreted Law: 53B-16-109**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-605	Filing ID 53591

**Agency Information**

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Regents Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ashley Reyes	801-321-7211	areyes@utahsbr.edu
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**

<b>2. Rule or section catchline:</b>
R765-605. Higher Education Success Stipend Program
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for filing this amendment is to require applicants of the Higher Education Success Stipend Program to complete the Free Application for Federal Student Aid as required by Subsection 53B-13b-104(3)(b). In addition, the label of the agency needs to be renamed in the Utah Administrative Code to comply with S.B. 111 passed in the 2020 General Session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The amendment provides an additional requirement for applicants of the Higher Education Success Stipend Program 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**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Enactment of this amendment likely will not materially impact state revenue because this rule applies only to students who apply under the Higher Education Success Stipend Program.
<b>B) Local governments:</b>
Enactment of this amendment likely will not materially impact local government entities revenue because this rule applies only to students who apply under the Higher Education Success Stipend Program.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
Enactment of this amendment likely 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.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
Enactment of this amendment likely 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.

<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>
Enactment of this amendment likely will not result in direct expenditures from tax or fee changes for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to institutions that register to participate in SARA.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no compliance costs for affected persons since the Higher Education Success Stipend Program is voluntary.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
This rule affects the Higher Education Success Stipend Program that is administered by Utah Higher Education Assistance Authority and has no fiscal impact on businesses. David R. Woolstenhulme, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.			

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 53B-13a-104(10)	Subsection 53B-13a-104(3)(b)	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/02/2021
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<b>10. This rule change MAY become effective on:</b>	08/09/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	06/14/2021
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**R765. [Regents]Higher Education (Utah Board of), Administration.**

**R765-605. Higher Education Success Stipend Program.**

**R765-605-1. Purpose.**

The purpose of this rule is to[Te] provide [Board of Regents ("the Board") policy]the rules and procedures for implementing the Higher Education Success Stipend Program[ ("HESSP", or program) (formerly known as the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program and 2011 by S.B. 107, Higher Education Success Stipend Program ("HESSP")].

**R765-605-2. [References]Authority.**

This rule is authorized by Subsection 53B-13a-104(10).~~[2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.~~

~~2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.~~

~~2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.~~

~~2.4. State Board of Regents Policy R512, Determination of Resident Status.]~~

**R765-605-3. [Effective Date]Definitions.**

(1) "Board means Utah Board of Higher Education.

(2) "Eligible institution" means:

(a) an institution in the Utah system of higher education that is described in Subsection 53B-2-101(1); and

(b) a Utah private, nonprofit postsecondary institution which is accredited by a regional accrediting organization recognized by the board. For purposes of this section, the board recognizes the Northwest Association of Schools and Colleges as the accrediting organization.

(3) "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.

(4) "FWSP" means Federal Work-Study Program.

(5) "Program" means Higher Education Success Stipend Program.

(6) "Program administrator" means the board's Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner for Student Financial Aid, under executive direction of the Commissioner of Higher Education.

(7) "HWSP" means HESSP Work-Study Program.[These policies and procedures are effective July 1, 2011.]

**R765-605-4. [Policy]Award Year.**

~~[4.1. Program Description — HESSP is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), "the Legislature finds that the prosperity, economic success, and general welfare of the people of Utah and of the state are directly related to the educational levels and skills of the citizens of the state, and financial assistance, to bridge the gap between a financially needy student's resources and the cost of attendance at a Utah postsecondary institution, is a necessary component for ensuring access to postsecondary education and training".]~~

~~[4.2. Award Year —]The award year for [HESSP is]the program shall be the twelve-month period coinciding with the state fiscal year beginning July 1 and ending June 30.~~

**R765-605-5. Student Eligibility.**

~~[4.3. Institutions Eligible to Participate — Eligible institutions include the eight institutions of the Utah System of Higher Education, Utah private, nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board, and the Utah System of Technical Colleges campuses. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges as the accrediting organization.]~~

~~[4.4.](1) [Students Eligible to Participate—]To be eligible for grant or work-study assistance from [HESSP]program funds, a student must:~~

~~[4.4.1.](a) be a resident student of the [S]state [of Utah] under [UCA]Section 53B-8-102 and [B]board [P]policy R512 or exempt from paying the nonresident portion of total tuition under [Utah Code]Section 53B-8-106. [For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution; and]~~

~~[4.4.2.](b) be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in [F]federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty[-], except that [This]this does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program; [and]~~

~~[4.4.3.](c) be maintaining satisfactory academic progress, as defined by the eligible institution, toward the degree, diploma, or certificate objective in which enrolled; [and]~~

~~[4.4.4.](d) meet all requirements of general eligibility for [Federal Higher Education Act Part]Title IV of the Higher Education Act, Student Financial Aid Programs, as defined in applicable U. S. Department of Education [R]regulations and the current edition of the Department of Education Student Aid Handbook; [and]~~

~~[4.4.5.](e) have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the [F]federal need analysis process for Title IV of the Higher Education Act [Title IV], [s]Student [f]Financial [assistance]Aid [p]Programs[-]; and~~

~~(f) in accordance with Subsection 53B-13a-104(3)(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:~~

~~(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.~~

~~[4.5. Program Administrator—The program administrator for HESSP is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.]~~

~~(2) 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.~~

#### **R765-605-6. Determination of Funds Available for The Program.**

~~[4.6.](1) [Determination of Funds Available for The Program—]Funds available for [HESSP]program allotments to eligible institutions may come from specifically earmarked state~~

appropriations, from the statewide student financial aid line item appropriation to the [B]board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

~~[4.6.1.](a) Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the [B]board, funds appropriated in the line item shall be applied in the following priority order:~~

~~[4.6.1.1.](i) [First priority is]Funds shall be given first to matching funds for Utah [S]system of [H]higher [E]education institutional awards from the [F]federal [G]government for campus-based [Federal Perkins Loan Program capital contributions,]Federal Supplemental Educational Opportunity Grant Program funds[-] and partial matching for the [Federal Work Study Program]FWSP.~~

~~[4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.]~~

~~[4.6.1.3.](ii) [All]Any remaining funds [are]shall be used for [HESSP]the program.~~

~~[4.6.2.](b) [All]Any funds appropriated by specific legislation, or in a specific line item for [HESSP]the program, and any funds from other sources contributed for [HESSP]the program, [are]shall be added together with funds available for [HESSP]the program pursuant to [subsection 4.6.1]Subsection (1)(a), to determine the total amount available for the program.~~

~~[4.7. Allotment of Program Funds to Institutions.]~~

#### **R765-605-7. Allotment of Program Funds to Institutions.**

~~[4.7.1.](1) Annually, the program administrator [will]shall request Federal Pell Grant disbursement data by March 1st. The director of financial aid of an eligible institution [will]shall demonstrate intention to continue participation in [HESSP]the program by submitting to the program administrator a certification, subject to audit, of[-]~~

~~(a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution; and[-]~~

~~(b) the total dollar amount of Federal Pell Grant funds awarded specifically to students at the eligible institution who were resident students of the state [of Utah]under [UCA]Section 53B-8-102 and [B]board [P]policy R512.~~

~~[4.7.2.](2) Failure to submit the certification required in [4.7.1]Subsection (1) by the requested date shall [constitutes]constitute an automatic decision by an eligible institution not to participate in the program for the next fiscal year.~~

~~[4.7.3.](3) Allotment of program funds to participating institutions [is]shall be in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating eligible institutions.~~

~~[4.7.4.](4) The program administrator [will]shall send official notification of each participating eligible institution's allotment, together with a blank copy of the format for the institutional [HESSP]program performance report to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.~~

#### **R765-605-8. Institutional Participation Agreement.**

~~[4.8. Institutional Participation Agreement—]Each participating eligible institution [will]shall enter into a written agreement with the program administrator, or assigned designee,~~

agreeing to abide by the program ~~[policies]~~rules, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the distribution of awards ~~[and actions taken]~~. ~~[By accepting the funds, the participating institution agrees to the following terms and conditions:]~~

~~[4.8.1. Use of Program Funds Received by the Institution.]~~

**R765-605-9. Use of Program Funds Received by the Institution.**

~~[4.8.1.1.]~~(1) The eligible institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to ~~[#]the eligible institution~~ for the award year in a budget for student financial aid administrative expenses of the institution, and ~~[will]~~, except as provided in Subsection (6), shall expend ~~[all]any~~ funds so budgeted before the end of the state fiscal year for which allotted.

~~[4.8.1.2(a).]~~(2) For any award year, the eligible institution may, at its option, place all or any portion of its allotted ~~[HESSP]program~~ funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under ~~[Federal Work Study Program (]the FWSP)]~~ regulations or in jobs provided in accordance with ~~[HESSP Work Study Program (]HWSP)]~~ ~~[policies]~~ rules ~~[set forth in [Section 4.9]Subsection R765-605-13[ herein]]. [The State Legislature has determined that]~~In accordance with Subsection 53B-13a-104(2), need-based work-study stipends must be given strong emphasis.

~~[4.8.1.2(b).]~~(3) Work-study payments from the eligible institution's ~~[HESSP]program~~ work-study budget, for jobs under either FWSP regulations or ~~[HWSP policies]program rules~~, ~~[will]shall~~ be counted as ~~[HESSP]program~~ awards for purposes of ~~[subsection 4.8.2.3]Subsection R765-605-10(3).~~

~~[4.8.1.3.]~~(4) All work-study jobs provided using ~~[HESSP]program~~ funds from the budget pursuant to this ~~[subsection]Section (9),~~ including ~~[those]work-study programs~~ established under FWSP regulations, ~~[will]shall~~ be identified to the recipient as ~~[HESSP]program~~ work-study awards. No portion of the institution's ~~[HESSP]program~~ allotment may be used as institutional match for ~~[Federal Work Study Program]FWSP~~ allocations.

~~[4.8.1.4.]~~(5) The eligible institution ~~[will]shall~~ place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to ~~[subsections 4.8.1.1 and 4.8.1.2,]Subsections (1) and (2),~~ in a budget to be used only for payment of ~~[HESSP]program~~ grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget ~~[will]shall~~ be identified to the recipient as Higher Education Success Stipend Grants.

~~[4.8.1.5.]~~(6) The eligible institution may not carry forward or carry back from one fiscal year to another any of its ~~[HESSP]program~~ allocation for a fiscal year. Any exception to this rule must be approved in advance by the ~~[HESSP]program~~ administrator. The eligible institution ~~[will]shall~~ inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year. Unused funds may be returned to the program administrator as directed. Returned funds ~~[will]shall~~ be re-~~[d]istributed~~ to the other eligible institutions as supplemental ~~[HESSP]program~~ allocations for disbursement during the same award year. The portion of ~~[HESSP]program~~ allocations budgeted for administrative expenses pursuant to ~~[Section 4.8.1.4]Subsection (1)~~ ~~[will]shall~~ not be part of any carryover.

~~[4.8.2. Determination of Awards to Eligible Students.]~~

**R765-605-10. Determination of Awards to Eligible Students.**

~~[4.8.2.1.]~~(1) Student Cost of Attendance budgets ~~[will]shall~~ be established by the eligible institution, in accordance with ~~[F]federal~~ regulations applicable to student financial aid programs under Title IV of the Higher Education Act~~[as amended]~~, for specific student categories authorized in the ~~[F]federal~~ regulations, and providing for the total of costs payable to the eligible institution plus other direct educational expenses, transportation and living expenses.

~~[4.8.2.2.]~~(2) ~~[HESSP]Program~~ work-study or grant amounts ~~[will]shall~~ be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who demonstrate the greatest financial need.

~~[4.8.2.3.]~~(3) The total amount of any ~~[HESSP]program~~ grant and~~[or]~~ work-study award to an eligible student in an award year ~~[will]shall~~ not exceed \$5,000, and the minimum ~~[HESSP]program~~ grant and~~[or]~~ work-study award to an eligible student ~~[will]shall~~ be \$300, except that:

~~[4.8.2.3(a).]~~(a) the minimum amount may be the amount of any funds remaining in the eligible institution's allotment for the award year in the case of the last eligible student receiving a ~~[HESSP]program~~ grant award for the year; and

~~[4.8.2.3(b).]~~(b) ~~[A]an~~ eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year~~[, such as two semesters, three quarters, nine months, or 900 clock hours)]~~, ~~[will]shall~~ be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the ~~[quarter(s)]quarter, [semester(s)]semester~~ or other defined term for which the student is enrolled.

~~[4.8.2.4.]~~(4) ~~[HESSP]Program~~ ~~[G]grants~~ and work-study stipends ~~[will]shall~~ be awarded and packaged on an annual award year basis. Grants ~~[will]shall~~ be paid one quarter or semester at a time~~[, or in thirds, if applicable to some other enrollment basis such as total months or total clock hours)]~~, contingent upon the student's maintaining satisfactory progress as defined by the eligible institution in published policies or rules. Work-study wages ~~[will]shall~~ be paid regularly as earned, provided the student is continuing to make satisfactory progress.

~~[4.8.2.5.]~~(5) ~~[All]Each~~ award[s] under the program ~~[will]shall~~ be made without regard to an applicant's race, creed, color, religion, sex, or ancestry~~[, or age]~~.

~~[4.8.2.6.]~~(6) Students receiving financial aid under the program ~~[will]shall~~ be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

~~[4.8.2.6(a).]~~ The student's signature on the ~~[Free Application for Federal Student Aid]FAFSA~~ may satisfy~~[ies]~~ this requirement.

~~[4.8.2.6(b).]~~(7) If the eligible institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used ~~[HESSP]program~~ grant or work-study funds for other purposes, the eligible institution ~~[will]shall~~ disqualify the student from ~~[HESSP]program~~ eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

~~[4.8.2.7.]~~(8) In no case ~~[will]shall~~ the eligible institution initially award program grants or work-study stipends or both in amounts which, with Federal Direct, Federal PLUS, ~~[and]or~~ Federal Perkins Loans ~~[and]or~~ other financial aid from any source, both need

and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

~~[4.8.2.8.](9)~~ If, after the student's aid has been packaged and awarded, the student later receives other financial assistance~~[-], such as, for example, merit or program-based scholarship aid[)],~~ or the student's cost of attendance budget changes, resulting in a later over-award of more than \$500, the eligible institution ~~[will]shall~~ appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

#### **R765-605-11. Reports.**

~~[4.8.3. Reports—]~~The eligible institution ~~[will]shall~~ submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

#### **R765-605-12. Records, Retention and Cooperation in Program Reviews.**

~~[4.8.4. Records Retention and Cooperation in Program Reviews—]~~The eligible institution ~~[will]shall~~ cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and ~~[will]shall~~ maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the eligible institution ~~[will]shall~~ retain records for the award year involved until the exception has been resolved.

#### **R765-605-13. Program Work-Study Program Rules.**

~~[4.9.](1) [HESP Work Study Program Guidelines—]~~If an eligible institution elects to utilize its ~~[HESP]program~~ ~~[W]work-~~~~[S]study~~ funds for the ~~[HESP Work Study Program—]~~~~[HWSP]~~ instead of in accordance with ~~[Federal Work Study—]~~~~[the FWSP]~~ regulations, the following ~~[guidelines]rules shall~~ apply~~[-]~~:

~~[4.9.1.](a) [Institutional Jobs—]~~The eligible institution may establish designated HWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions~~[-]~~:

~~[4.9.1.1.](i)~~ ~~[F]~~the job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the HWSP institutional job~~[-]~~;

~~[4.9.1.2.](ii)~~ ~~[F]~~the hourly wage for the HWSP institutional job must be no less than the current ~~[F]~~federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system~~[-]~~; and

~~[4.9.1.3.](iii)~~ ~~[F]~~the eligible institution may pay up to one hundred percent of the hourly wage for the institutional job from its ~~[HESP]program~~ work-study budget established pursuant to ~~[subsection 4.9.1]Subsection (9)(a)~~, provided the total wages paid to a student for the job from ~~[HESP]the program~~ and any other institutional funds do not exceed the amount of the award to the student for the award year.

~~[4.9.2.](b) [School Assistant Jobs—]~~The eligible institution may establish designated HWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with

individual schools or school districts, and administer such jobs in accordance with the following conditions:

~~[4.9.2.1.](i)~~ ~~[F]~~the hourly wage for the HWSP school assistant job must be no less than the current ~~[F]~~federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system~~[-]~~; and

~~[4.9.2.2.](ii)~~ ~~[F]~~the eligible institution may pay up to one hundred percent of the hourly wage for the job from its ~~[HESP]program~~ work-study budget established pursuant to ~~[subsection 4.9.2]Subsection (b)~~, provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

~~[4.9.3.](c) [Community Service Jobs—]~~The eligible institution may establish designated HWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions:

~~[4.9.3.1.](i)~~ ~~[F]~~the hourly wage for the HWSP community service job must be no less than the current ~~[F]~~federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system~~[-]~~; and

~~[4.9.3.2.](ii)~~ ~~[F]~~the eligible institution may pay up to one hundred percent of the hourly wage for the job from its ~~[HESP]program~~ work-study budget established pursuant to ~~[subsection 4.9.3]Subsection (c)~~, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

~~[4.9.4.](d) [Matching Jobs—]~~The eligible institution may establish designated HWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions:

~~[4.9.4.1.](i)~~ ~~[F]~~the matching job ~~[may]shall~~ not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political~~[-]~~;

~~[4.9.4.2.](ii)~~ ~~[F]~~the matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the HWSP matching job~~[-]~~;

~~[4.9.4.3.](iii)~~ ~~[F]~~the hourly wage for the HWSP matching job must be no less than the current ~~[F]~~federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system~~[-]~~; and

~~[4.9.4.4.](iv)~~ ~~[F]~~the eligible institution may pay up to fifty percent of the hourly wage for the job from its ~~[HESP]program~~ work-study budget established pursuant to ~~[subsection 4.9.4]Subsection (d)~~, provided the total wages, ~~[including the employer-paid portion]~~, paid to the student do not exceed the amount of the award to the student for the award year.

~~[4.9.5.](e)~~ An eligible ~~[F]~~institution~~[s]~~ ~~[are—strongly encouraged to]shall~~ place the student~~[s]~~, ~~[when]whenever~~ possible, in HWSP jobs which have a relationship to the student's field of study or training.

~~[4.9.6.](f)~~ An eligible ~~[F]~~institutions or the employing organization must pay the employer portion of required ~~[F]~~federal ~~[F]~~taxes~~[-]~~, including FICA, FUI, and SUI~~[)]~~, from institutional funds, for ~~[the]any~~ student~~[s]~~ who ~~[are]is~~ paid for a work-study award.

NOTICES OF PROPOSED RULES

[4-9-7-](g) If an eligible institution employs any student[s] in a work-study job[s] or other institutional job[s] cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a [~~HESSP-~~]program funded work-study job, the eligible institution [~~is required to~~]shall pay the costs of any such required employee benefits from institutional funds other than [~~HESSP-~~]program allotted funds.

**KEY: financial aid, higher education**  
**Date of Enactment or Last Substantive Amendment: ~~2021~~June 24, 2013**  
**Notice of Continuation: April 11, 2018**  
**Authorizing, and Implemented or Interpreted Law: ~~53B-8-102;~~53B-8-104(3)(b); 53B-13a-104(10)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R765-613	Filing ID 53592

**Agency Information**

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Regents Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ashley Reyes	801-321-7211	areyes@utahsbr.edu
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**

<b>2. Rule or section catchline:</b>
R765-613. Public Safety Officer Career Advancement Reimbursement (POSCAR)
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for filing this amendment is to change the name of the agency in the Utah Administrative Code to comply with S.B. 111 passed in the 2020 General Session.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The amendment changes the name of the agency from "Regents (Board of)" to "Higher Education (Utah Board of)." In addition, the amendment adds an additional requirement for eligibility and clarifies that the Commissioner's decision in any agency action is the agency's final decision. Further, there are several technical changes, including the renumbering of subsections.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

Enactment of this amendment likely will not materially impact state revenue because this rule applies only to students who apply under the Public Safety Officer Career Advancement Reimbursement (POSCAR) Program.

**B) Local governments:**

Enactment of this amendment likely will not materially impact local governments' revenue because this rule applies only to students who apply under the POSCAR Program.

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

Enactment of this amendment likely 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 amendment likely 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 amendment likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities who are not students of the state system of higher education. For students in the state system of higher education, this rule applies only to those who apply under the POSCAR Program. The program is voluntary, and this rule does not impose a regulatory burden.



**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons since the POSCAR Program is voluntary.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule affects the POSCAR Program that is administered by Utah Higher Education Assistance Authority and has no fiscal impact on businesses. David R. Woolstenhulme, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection		
53B-8-112(6)		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/02/2021

**10. This rule change MAY become effective on:** 08/09/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	06/14/2021
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**R765. [Regents]Higher Education (Utah Board of), Administration.**

**R765-613. Public Safety Officer Career Advancement Reimbursement Program(POSCAR).**

**R765-613-1. Purpose.**

The PSOCAR Program is a state funded tuition reimbursement for peace officers enrolled in criminal justice related programs at a credit-granting institution in the state system of higher education[Utah System of Higher Education (USHE) institution], available for up to eight academic years that are not necessarily consecutive.

**R765-613-2. [References]Authority.**

This rule is authorized by Subsection 53B-8-112(6).[~~2-1. Utah Code Section 53B-8-112 (Public Safety Officer Career Advancement Scholarship)~~

~~2.2. Utah Code Section 63G-4-202 (Designation of adjudicative proceedings as informal Standards Undesignated proceedings formal)]~~

**R765-613-3. [Effective Date]Definitions.**

(1) "Board" means Utah Board of Higher Education.[~~These policies and procedures are effective May 19, 2017.~~]

(2) "PSOCAR Program" means Public Safety Officer Career Advancement Reimbursement Program established under Section 53B-8-112.

**R765-613-4. Application Process.**

[4.1.](1) A [Q]qualified applicant[s] may be reimbursed up to half of tuition and fees with a maximum of \$5,000 per year, subject to funding. If the total applicant awards exceed available funding in any given year, the [B]board [will]shall reduce reimbursement amounts evenly across all qualified applicants, maintaining that the minimum [designated]amounts designated by Subsection 53B-8-112(4) for particular rural counties are met.

[4.2.](2) To qualify, an applicant[s] must be:

[4.2.1.](a) a certified peace officer, currently employed by a Utah law enforcement agency,

[4.2.2.](b) employed by a Utah law enforcement agency as a certified peace officer for three consecutive years prior to the completion of the academic year for which ~~he or she~~the applicant is seeking reimbursement,~~and~~

(c) seeking a post-secondary degree in the area of criminal justice from a credit-granting institution in the state system of higher education; and

[4.2.3.](d) employed by a Utah law enforcement agency as a certified peace officer for one additional year after the completion of that academic year.

[4.3.](3) The application form [will]shall be available at the [Board of Regents]board's website, [higherduutah.org](http://higherduutah.org). An [A]applicant[s] must complete the entire application and include all required documentation and certifications including,

[4.3.1.](a) ~~[Employer]~~employer certification from an authorized representative of each employer for the four year period~~[-]; and~~

[4.3.2.](b) [A]a copy of [the]each tuition payment ~~[receipt(s)]receipt~~ and ~~[transcript(s)]transcript~~ with final grades for the enrollment period.

**R765-613-5. Application Deadlines.**

[5.1.](1) The 2017 application [will]shall allow for reimbursement to criminal justice students who were enrolled during the 2015-2016 academic year, defined as July 1, 2015 to June 30, 2016, who meet program requirements. Application deadlines for subsequent years [will]shall retain these time frames, adjusted for the next year.

[5.2.](2) For the first year of the program, a qualified applicant[s] may submit an application[s] beginning July 1, 2017, after the post-enrollment work component is complete. An [A]applicant[s] for subsequent years may begin submitting an application[s] July 1 of the year in which [they]the applicant [are]is applying.

[5.3.](3) The 2017 applications are due by November 1, 2017 to be considered for funding. An [A]applications must be postmarked or received by the criminal justice department at the institution by the application deadline in order to be considered. The deadline for subsequent years applications will be September 1st. The postmark or received by requirements remain the same. Application deadlines may be extended at the discretion of the Commissioner of Higher Education or designee.

**R765-613-6. Appeals Process.**

[6.1.](1) An [A]applicant[s] who wishes to appeal a reimbursement decision may do so, in writing to the Commissioner of Higher Education or designee. The applicant's appeal [shall]must be postmarked within 30 days from the date on which the reimbursement decision was made.

[6.2.](2) An [A]applicant[s] shall include all relevant arguments and documentation in [their]the applicant's written appeal[s].

[6.3.](3) The Commissioner of Higher Education or designee shall review the appeal and issue a written decision in accordance with the ~~[Utah]~~Administrative Procedures Act. The Commissioner's decision is the final agency action and is subject to judicial review under Title 63G, Chapter 4, Part 4, Administrative Procedures Act.

[6.4.](4) Appeals proceedings under this section are designated as informal pursuant to ~~[Utah Code]~~Section 63G-4-202.

**KEY: tuition reimbursement, higher education, peace officers, POSCAR**

**Date of Enactment or Last Substantive Amendment: 2021[November 10, 2017]**

**Authorizing, and Implemented or Interpreted Law: 53B-8-112**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R994-204-405	Filing ID 53602

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Unemployment Insurance	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R994-204-405. Remote Service Marketplace Platforms
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of the new section of this rule is to clarify that pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Subsection 3304(a)(6)(A), and for purposes of Title 35A, Chapter 4, Employment Security Act (unemployment insurance), covered employment includes remote services performed for a governmental entity, federally recognized Indian tribe, or non-profit organization that is exempt from

taxation under Section 501(c)(3) of the Internal Revenue Code.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The Federal Unemployment Tax Act, 26 USC Subsection 3304(a)(6)(A), provides that remote services performed for a governmental entity, federally recognized Indian tribe, or non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code must be considered covered employment under the state unemployment insurance program, notwithstanding the provisions Title 34, Chapter 53a, Remote Service Marketplace Platforms Act.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures as it merely clarifies existing practice and procedure.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program does not rely on local governments for funding, administration, or enforcement.

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

This rule change is not expected to have any fiscal impact on small businesses since the Department of Workforce Services (Department) is merely changing this rule to reflect current law and practice. This rule change will not change the current covered or non-covered status of any employee and thus will not impact any employer's unemployment insurance contribution rate.

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

This rule change is not expected to have any fiscal impact on non-small businesses since the Department is merely changing this rule to reflect current law and practice. This rule change will not change the current covered or non-covered status of any employee and thus will not impact any employer's unemployment insurance contribution rate.

**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 any fiscal impact on other persons since the Department is merely changing this rule to reflect current law and practice. This rule change will not change the current covered or non-covered status of any employee and thus will not impact any employer's unemployment insurance contribution rate.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons beyond unemployment insurance contributions that businesses were already required to pay. This rule change will not change the current covered or non-covered status of any employee and thus will not impact any employer's unemployment insurance contribution rate.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After a thorough analysis, it was determined that these proposed rule changes will result in a fiscal benefit to businesses. Casey Cameron, Executive Director

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 35A-4-204	26 USC Subsection 3304(a)(6)(A)	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/02/2021

<b>10. This rule change MAY become effective on:</b>	08/09/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	06/15/2021
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**R994. Workforce Services, Unemployment Insurance.**

**R994-204. Covered Employment.**

**R994-204-405. Remote Service Marketplace Platforms.**

Pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec 3304(a)(6)(A), the provisions of Title 34, Chapter 53a, Remote Service Marketplace Platforms Act, do not apply to employment status determinations under Title 35A, Chapter 4, Employment Security Act, for services performed for a governmental entity, federally recognized Indian tribe, or non-profit organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code.

**KEY: unemployment compensation, employment tests, independent contractor**

**Date of Enactment or Last Substantive Amendment: 2021~~July 1, 2007~~**

**Notice of Continuation: March 9, 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-4-204; 26 USC 3304(a)(6)(A)**

**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.):	R277-309	Filing ID: 52803

### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R277-309. Appropriate Licensing and Assignment of Teachers
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute

the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53E-6-201(2)(a) which authorizes the Board to rank, endorse, or classify licenses.

### 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 local school boards to employ educators in appropriate assignments; the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and the Board and local school boards to satisfy the requirements of ESEA for local school boards to receive federal funds. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-530	Filing ID: 53401

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-530. Utah Effective Educator Standards
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsections 53E-3-501(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no written comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule continues to be necessary because it establishes statewide effective teaching standards for Utah public education teachers; statewide educational leadership standards for Utah public education administrators; and statewide educational school counselor standards for Utah public education school counselors. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-531</b>	<b>Filing ID: 50491</b>

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-531. Public Educator Evaluation Requirements (PEER)
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsections 53E-3-501(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and Section 53G-11-504 which directs that the Board adopt rules to guide school district employee evaluations.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There 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 a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness. The process shall focus on the improvement of high quality instruction and improved student achievement; include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and ensure school districts engage in a consistent process statewide of educator evaluation. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-600</b>	<b>Filing ID:</b>	<b>53395</b>
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**Agency Information**

<b>1. Department:</b>	Education		
<b>Agency:</b>	Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R277-600. Student Transportation Standards and Procedures

**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 the Utah Constitution, Article X, Section 3, which vests general control and supervision over public schools in the Board; Subsection 53E-3-501(1)(d) which directs the Board to establish rules for bus routes, bus safety and other transportation needs; Sections 53F-2-402 and 53F-2-403 which provide for distribution of funds for transportation of public school students; Section 53F-2-417 which directs the Board to make rules to implement rural school district transportation grants; 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 specifies the standards under which school districts may qualify for and receive state transportation funds. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-601</b>	<b>Filing ID:</b>	<b>52497</b>
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**Agency Information**

<b>1. Department:</b>	Education		
<b>Agency:</b>	Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200		

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-601. Standards for Utah School Buses and Operations

**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 the Utah Constitution, Article X, Section 3, which vests general control and supervision of the public education in the Board; Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities; and Subsection 53E-3-501(1)(d) which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs.

**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 specifies standards for state student transportation funds, school buses, and school bus drivers utilized by school districts. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-607</b>	<b>Filing ID:</b>	<b>52860</b>
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**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration

<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-607. Absenteeism and Truancy Prevention

**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 the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state; and Section 53G-6-206 which directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or who should be enrolled in a local education agency (LEA).

**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 directs an LEA to create policies for truancy procedures and compulsory education. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-700	Filing ID: 53188

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-700. Student Mastery and Assessment of Core Standards
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Section 53E-3-501, which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Section 53E-4-202 which directs: (i) the Board to establish Core Standards in consultation with LEA boards and superintendents; and (ii) LEA boards to adopt local curriculum and to design programs to help students master the General Core; Title 53E, Chapter 4, Part 2, Career and College Readiness Mathematics Competency which directs the Board to establish college and career mathematics competency standards; and Section 53E-4-205 which requires the Board to provide rules related to a basic civics test.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no written comments received.

<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule continues to be necessary because it specifies the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-920	Filing ID: 53277

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act

which requires the Board to make rules to establish: an appeal process for the denial of a school turnaround plan; provisions regarding funding distributed to a low performing school; criteria for granting an extension to a low performing school; criteria for exiting a school that has demonstrated sufficient improvement; criteria for approving a teacher recruitment and retention plan; implications for a low performing school; and eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development 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:**

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 enacts provisions governing school improvement efforts; and implement and administer the School Turnaround and Leadership Development Act. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-925</b>	<b>Filing ID: 53030</b>

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-925. Effective Teachers in High Poverty Schools Incentive 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 authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53F-2-513(2)(b) which requires the Board to make rules for the administration of the Effective Teachers in High Poverty Schools Incentive 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:**

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 standards and procedures for the administration of the Effective Teachers in High Poverty Schools Incentive Program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	06/07/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R388-804</b>	<b>Filing ID: 52332</b>

**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 142104

<b>City, state and zip:</b>	Salt Lake City, UT 84114-2104	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Hayder Allkhenfr	385-259-5204	hallkhenfr@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R388-804. Special Measures for the Control of Tuberculosis
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule establishes standards for the control and prevention of tuberculosis (TB) as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures. The purpose of this rule is to focus the efforts of TB control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to TB.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no comments received in opposition to the continuation of Rule R388-804.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The Department of Health (Health) recommends the continuation of Rule R388-804 to maintain progress towards national and international objectives of controlling TB. The Center for Disease Control (CDC) has a national strategic TB plan, and in 2015, the U.S. government released an action plan specifically addressing drug-resistant TB. This rule establishes procedures for the control and prevention of TB, and it maintains the essential TB program elements needed in Utah. These measures and standards allow the state and public health jurisdictions to control and prevent TB and pave the way towards TB elimination in the US. The Department received no comments in opposition to the continuation of Rule R388-804.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-505</b>	<b>Filing ID: 53270</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules while Section 26-1-5 authorizes the Department to adopt rules as necessary for program implementation.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department did not receive any written comments regarding this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Department will continue this rule because it sets forth requirements for nursing facilities to participate in the Nursing Facility Non-State Government-Owned Upper Payment Limit program.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-206</b>	<b>Filing ID: 51402</b>
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**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-206. Privacy of Consumer Financial and Health Information Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Sections 31A-2-201 and 31A-2-202 authorize the Insurance Commissioner to administer, enforce, and perform duties imposed by the provisions of Title 31A, Insurance Code. Title V, Section 505 (15 United States Code 6805) empowers the Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act

of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805 (b)(2)) authorizes the Insurance Commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. Subsection 31A-23a-417(3) authorizes the Insurance Commissioner to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Insurance Department (Department) received two written comments regarding this rule during the past five years. Both were supportive. One suggested a technical change and removal of a redundant section; the Department agreed and made both changes in a CPR.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Federal law requires states to comply with the privacy laws and to implement them by rule. This rule governs the treatment of nonpublic personal health and financial information about individuals by all licensees of the Department. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	06/08/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-261</b>	<b>Filing ID: 51444</b>
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**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

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

**General Information**

**2. Rule catchline:**

R590-261. Health Benefit Plan Adverse Benefit Determinations

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to make rules to implement the provisions of Title 31A, Insurance Code. Subsection 31A-2-212(5)(b) requires the Insurance Commissioner to require compliance with the Patient Protection and Affordable Care Act and administrative rules adopted by the Insurance Commissioner related to regulation of health benefit plans. Subsection 31A-22-629(4) requires the Insurance Commissioner to adopt rules that establish standards for independent reviews.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Insurance Department has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule must be continued because it implements standards that are required by the Patient Protection and Affordable Care Act. It provides a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of a final adverse benefit determination.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	06/08/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-272</b>	<b>Filing ID:</b>	<b>51455</b>
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**Agency Information**

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration

<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

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

**General Information**

**2. Rule catchline:**

R590-272. Commission Compensation Reporting

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsection 31A-2-201(3) authorizes the Insurance Commissioner to implement the provisions of Title 31A, Insurance Code. Subsection 31A-23a-501(4) requires that an insurance producer provide a compensation disclosure to a large customer and requires the producer to provide a copy of such disclosures to the Insurance Department (Department) upon request.

**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 regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule must be continued because insurance producers are still required by statute to provide a compensation disclosure to their large customers when they place a health benefit plan with them. This helps customers know how their insurance producers are being compensated.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	06/08/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R592-11	Filing ID: 51472

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Title and Escrow Commission	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R592-11. Title Insurance Producer Annual Reports
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 31A-2-404(2)(a) requires the Title and Escrow Commission to make rules related to title insurance. Section 31A-23a-413 requires the annual filing of a report by each title insurance producer, as defined in Section R592-11-3. This rule currently references Subsection 31A-23a-406(1)(g), but the reference will be updated in a future amendment to Subsection (i), which requires title licensees to maintain a physical office in Utah for the processing of escrow.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Insurance Department has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is needed to establish the form and filing deadline for the Title Insurance Producer Annual Report required by Section 31A-23a-413. Therefore, this rule must be continued. The Title and Escrow Commission voted at its

June 14, 2021, meeting to continue this rule by a vote of 4 - 0.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	06/14/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R643-870	Filing ID: 51556

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R643-870. Abandoned Mine Reclamation Regulation Definitions
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act. Rule R643-870 defines the terms used throughout Title R643.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. In addition, there is ongoing operational activity and rules are required to establish appropriate standards to ensure there is minimal damage to the environment and productivity of soil, as well as to protect the health and safety of the public. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-872</b>	<b>Filing ID:</b>	<b>51558</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple, Suite 1210		
<b>City, state and zip:</b>	Salt Lake City, UT 84114		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Natasha Ballif	801-538-5328	natashaballif@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R643-872. Abandoned Mine Reclamation Fund
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act. Rule R643-872 establishes the Abandoned Mine Reclamation Fund.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>

No written comments have been received on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes the Abandoned Mine Reclamation Fund to provide monies to the Abandoned Mine Reclamation Program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-874</b>	<b>Filing ID:</b>	<b>51561</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple, Suite 1210		
<b>City, state and zip:</b>	Salt Lake City, UT 84114		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Natasha Ballif	801-538-5328	natashaballif@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R643-874. General Reclamation Requirements
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.

**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 on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes reclamation objectives and priorities and gives reclamation contractor responsibility. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-875</b>	<b>Filing ID: 51565</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R643-875. Noncoal Reclamation
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering

a program under the federal Surface Mining Control and Reclamation Act.

**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 on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes eligibility requirements for noncoal reclamation work to be completed by the Utah Abandoned Mine Reclamation Program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-877</b>	<b>Filing ID: 51559</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R643-877. Rights of Entry
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>



Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.

**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 on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures for entry on lands or property by Division staff for reclamation purposes. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-879</b>	<b>Filing ID:</b>	<b>51568</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple, Suite 1210		
<b>City, state and zip:</b>	Salt Lake City, UT 84114		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Natasha Ballif	801-538-5328	natashaballif@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R643-879. Acquisition, Management, and Disposition of Lands and Water

**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 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.

**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 on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures for acquisition of eligible land and water resources for emergency and reclamation purposes by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-882</b>	<b>Filing ID:</b>	<b>51564</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple, Suite 1210		
<b>City, state and zip:</b>	Salt Lake City, UT 84114		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Natasha Ballif	801-538-5328	natashaballif@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R643-882. Reclamation on Private Land
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-884</b>	<b>Filing ID: 51566</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R643-884. State Reclamation Plan
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures and requirements for the preparation, submission, and approval of the Reclamation Plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R643-886</b>	<b>Filing ID: 51567</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Abandoned Mine Reclamation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R643-886. State Reclamation Grants
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures for grants to the Division for reclamation of eligible lands. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-100</b>	<b>Filing ID: 51575</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Oil, Gas and Mining; Coal
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple, Suite 1210
<b>City, state and zip:</b>	Salt Lake City, UT 84114

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-100. Administrative: Introduction
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures for the Division to implement provisions relating to the Coal Mining Reclamation Act of 1979. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-103</b>	<b>Filing ID: 51570</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Oil, Gas and Mining; Coal
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple, Suite 1210

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-103. Areas Unsuitable for Coal Mining and Reclamation Operations
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes procedures for designating lands unsuitable for all or certain types of coal mining and reclamation operations. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>			
<b>Utah Admin. Code Ref (R no.):</b>	R645-200	<b>Filing ID:</b>	51573

**Agency Information**

<b>1. Department:</b>	Natural Resources
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<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-200. Coal Exploration: Introduction
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes responsibilities that apply to the Division and to any person who conducts or seeks to conduct coal exploration in Utah. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>			
<b>Utah Admin. Code Ref (R no.):</b>	R645-201	<b>Filing ID:</b>	51580

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>	
R645-201. Coal Exploration: Requirements for Exploration Approval	
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>	
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.	
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>	
No written comments have been received on this rule.	
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>	
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes Coal Exploration Plan Reviews and directs the Division to work with other agencies to reduce the duplication of work and operator effort. Therefore, this rule should be continued.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-202</b>	<b>Filing ID: 51576</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>	
R645-202. Coal Exploration: Compliance Duties	
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>	
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.	
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>	
No written comments have been received on this rule.	
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>	
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes performance standards for persons exploring for Coal and requires that, while in the exploration area, a copy of the Notice of Intention must be available upon request. Therefore, this rule should be continued.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R645-203	Filing ID: 51577

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-203. Coal Exploration: Public Availability of Information
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes that all information will be made available for public inspection unless the person submitting it requests in writing, at the time of submission, that it not be disclosed. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R645-300	Filing ID: 51578

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-300. Coal Mine Permitting: Administrative Procedures
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes broad and effective public participation in the review of applications and the issuance or denial of coal mine permits. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-301</b>	<b>Filing ID: 51592</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-301. Coal Mine Permitting: Permit Application Requirements
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule presents the requirements for each permit application, including general contents, soils, biology, land use and air quality,

engineering, geology, hydrology, and bonding and insurance. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-302</b>	<b>Filing ID: 51581</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-302. Coal Mine Permitting: Special Categories and Areas of Mining
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule establishes the minimum requirements for approval to conduct coal mining and reclamation under designated special categories and areas of mining. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-303</b>	<b>Filing ID: 51586</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-303. Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Salt of Permit Rights
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on 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:**

Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule provides procedures for the Division to review, change, and renew permits under the regulatory program, as well as provides procedures for transfer, sale, or assignment of rights granted in permits under the state program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-402</b>	<b>Filing ID: 51589</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R645-402. Inspection and Enforcement: Individual Civil Penalties
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.



**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 on 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:**  
 Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule provides guidance to exercise the authority on individual civil penalties. Therefore, this rule should be continued.

**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 on 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:**  
 Under the federal Surface Mining Control and Reclamation Act, Utah is required to have rules in place to administer a Coal Mining and Reclamation program. This rule provides guidance to exercise the authority for criminal penalties and civil actions. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	06/09/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R645-403</b>	<b>Filing ID: 51583</b>

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R933-2</b>	<b>Filing ID: 52148</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Coal	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Preconstruction, Right of Way Acquisition	
<b>Room no.:</b>	Administrative Suite, 1st floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

**General Information**

<b>2. Rule catchline:</b>
R645-403. Alternative Enforcement
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 40-10-6.5 requires that the Board of Oil, Gas and Mining promulgate rules under Title 40, Chapter 10, Coal Mining and Reclamation for the purpose of administering a program under the federal Surface Mining Control and Reclamation Act.

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

**General Information**

**2. Rule catchline:**

R933-2. Control of Outdoor Advertising Signs

**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 provides general rulemaking authority for Utah Department of Transportation's (UDOT) administration of state transportation systems and programs, which would include its outdoor advertising program. More specifically, Sections 72-7-501 to 516 (the Utah Outdoor Advertising Act) provides rulemaking authority to UDOT for the regulation of outdoor advertising consistent with zoning principles and the public policy of Utah to provide for public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in highways, to preserve the natural scenic beauty of lands bordering on highways, and to ensure that outdoor advertising shall be continued as a standardized medium of communication throughout the state so that it is preserved and can continue to provide general information in the specific interest of the traveling public safely and effectively. See purpose language found in the Utah Outdoor Advertising Act at Section 72-7-501.

**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 not been any comments received regarding this rule in the past five years. It is noted, however, that the Legislature regularly considers outdoor advertising statutes that would require revisions to this rule if those revisions were passed into law. At this time, however, no such revisions have passed.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule ensures UDOT remains in compliance with the Federal Highway Beautification Act, as well as the Utah Outdoor Advertising Act, thus preserving compliance with the related Utah-Federal Agreement executed by the Governor of Utah and the Secretary of the United States Department of Transportation's Federal Highway Administrator on January 18, 1968, (see Rule R933-5). Should UDOT fail to continue this rule, UDOT would risk losing considerable funding. No opposition to this rule has been received by UDOT. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	06/14/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R933-5</b>	<b>Filing ID:</b>	<b>52160</b>
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**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Presconstruction, Right of Way Acquisition	
<b>Room no.:</b>	Administrative Suite, 1st floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

**General Information**

**2. Rule catchline:**

R933-5. Utah-Federal Agreement for the Control of Outdoor Advertising

**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 Utah-Federal Agreement was executed by the Governor of Utah and the Secretary of the United States Department of Transportation's Federal Highway Administrator on January 18, 1968. It sets out the parameters by which Utah agrees to manage and regulate outdoor advertising along the federal highway system. Though never placed in the Utah Code, the legislature has ratified the governor's execution of the agreement under Section 72-7-501.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

On occasion, the outdoor advertising industry has made inquiry regarding state laws that relate to how non-conforming signs are treated under various state code provisions. No requests for changes to the rule have been made, however.

**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 Federal Highway Beautification Act (23 USC section 131) requires states to maintain effective control of outdoor advertising or face a potential loss of up to ten percent of federal funds available to the state. Part of the effective control requirement is determining what constitutes "customary use" by agreement between the state and the US Department of Transportation (USDOT). See 23 USC 131(c)(d). This rule codifies that agreement between the Utah Department of Transportation (UDOT) and USDOT. Should UDOT fail to continue this rule, UDOT would risk losing considerable federal funding. No opposition to this rule has been stated; rather, only inquiries regarding this rule have been made. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	06/04/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R940-7</b>	<b>Filing ID:</b>	<b>52163</b>
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**Agency Information**

<b>1. Department:</b>	Transportation Commission
<b>Agency:</b>	Administration
<b>Room no.:</b>	Administrative Suite, 1st floor
<b>Building:</b>	Calvin Rampton
<b>Street address:</b>	4501 S 2700 W

<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R940-7. Marda Dillree Corridor Preservation Fund

**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 provides general rulemaking authority for Utah Department of Transportation's (UDOT) administration of state transportation systems and programs, which would include the Marda Dillree Corridor Preservation Fund. More specifically, Subsections 72-2-117(6)(f) and 72-2-117(9) require the Utah Transportation Commission to make rules to establish procedures for the Fund, as well as to establish a corridor preservation advisory council.

**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 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 statute to establish procedures for administration of the Marda Dillree Corridor Preservation Fund, as well as to establish a corridor preservation advisory council. This rule fulfills that statutory requirement. It also aids UDOT's administration of the

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Fund in an efficient, open, and transparent way that allows input from interested members of the public as well as each of Utah's metropolitan planning organizations, which improves coordination of corridor preservation efforts between UDOT and local governments. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	06/04/2021
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Agriculture and Food

#### Animal Industry

No. 53311 (Amendment) R58-21: Trichomoniasis  
Published: 02/15/2021  
Effective: 06/04/2021

No. 53311 (Change in Proposed Rule) R58-21:  
Trichomoniasis  
Published: 04/15/2021  
Effective: 06/04/2021

No. 53409 (Repeal) R58-24: Community Spay and Neuter  
Grants  
Published: 05/01/2021  
Effective: 06/28/2021

#### Regulatory Services

No. 53379 (New Rule) R70-590: Utah Domesticated Game  
Slaughter and Processing  
Published: 04/15/2021  
Effective: 06/04/2021

No. 53433 (Amendment) R70-910: Registration of  
Servicepersons for Commercial Weighing and Measuring  
Devices  
Published: 05/15/2021  
Effective: 06/28/2021

### Commerce

#### Real Estate

No. 53376 (Amendment) R162-2f: Real Estate Licensing  
and Practices Rules  
Published: 05/01/2021  
Effective: 06/08/2021

### Education

#### Administration

No. 53412 (Amendment) R277-108: Annual Assurance of  
Compliance by Local School Boards  
Published: 05/01/2021  
Effective: 06/24/2021

No. 53411 (Amendment) R277-301: Educator Licensing  
Published: 05/01/2021  
Effective: 06/24/2021

No. 53413 (Amendment) R277-325: Public Education Exit  
and Engagement Surveys  
Published: 05/01/2021  
Effective: 06/24/2021

No. 53367 (Amendment) R277-419: Pupil Accounting  
Published: 04/01/2021  
Effective: 06/15/2021

No. 53414 (Amendment) R277-614: Athletes and Students  
with Head Injuries  
Published: 05/01/2021  
Effective: 06/24/2021

No. 53417 (New Rule) R277-727: School Meals Program  
Published: 05/01/2021  
Effective: 06/24/2021

No. 53416 (Amendment) R277-733: Incorporation of Utah  
Adult Education Policies and Procedures Guide by Reference  
Published: 05/01/2021  
Effective: 06/24/2021

### Environmental Quality

#### Administration

No. 53378 (New Rule) R305-11: Clean Air Support  
Restricted Account Grant Program New Rule  
Published: 04/15/2021  
Effective: 06/01/2021

NOTICES OF RULE EFFECTIVE DATES

Governor

Economic Development

No. 53468 (Amendment) R357-24: Utah Works Program  
Published: 05/15/2021  
Effective: 06/23/2021

No. 53418 (Amendment) R357-25: Rural Coworking and  
Innovation Center Grant Program

Published: 05/01/2021  
Effective: 06/08/2021

Health

Administration

No. 53290 (New Rule) R380-412: Compassionate Use  
Board  
Published: 02/15/2021  
Effective: 06/03/2021

Disease Control and Prevention, Health Promotion

No. 53257 (Amendment) R384-415: Electronic Cigarette  
Substance Standards  
Published: 01/15/2021  
Effective: 06/01/2021

No. 53257 (Change in Proposed Rule) R384-415:

Electronic Cigarette Substance Standards  
Published: 03/15/2021  
Effective: 06/01/2021

Family Health and Preparedness, Primary Care and Rural  
Health

No. 53446 (Amendment) R434-40: Utah Health Care  
Workforce Financial Assistance Program Rules  
Published: 05/15/2021  
Effective: 06/24/2021

Disease Control and Prevention, Laboratory Improvement

No. 53363 (Amendment) R444-14: Rule for the  
Certification of Environmental Laboratories  
Published: 04/01/2021  
Effective: 06/11/2021

Insurance

Administration

No. 53469 (Amendment) R590-200-5: Minimum Standards  
and General Provisions  
Published: 05/15/2021  
Effective: 06/22/2021

No. 53467 (Amendment) R590-254: Annual Financial  
Reporting Rule

Published: 05/15/2021  
Effective: 06/22/2021

Natural Resources

Oil, Gas and Mining; Oil and Gas

No. 53303 (Amendment) R649-1: Oil and Gas Definitions  
Published: 02/15/2021  
Effective: 05/27/2021

No. 53303 (Change in Proposed Rule) R649-1: Oil and  
Gas Definitions

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No. 53306 (Amendment) R649-10: Administrative  
Procedures

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No. 53306 (Change in Proposed Rule) R649-10:  
Administrative Procedures

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No. 53305 (New Rule) R649-11: Administrative Penalties

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Administrative Penalties  
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Public Service Commission

Administration

No. 53438 (Amendment) R746-8: Calculation and  
Application of UUSF Surcharge  
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School and Institutional Trust Lands

Administration

No. 53407 (Repeal and Reenact) R850-80: Sale of Trust  
Lands  
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**End of the Notices of Rule Effective Dates Section**