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

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

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

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

A state agency may file a PROPOSED RULE when it determines the need for a substantive change to an existing rule. With a NOTICE OF PROPOSED RULE, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between September 02, 2021, 12:00 a.m., and September 15, 2021, 11:59 p.m., are included in this, the October 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 Rules being repealed are completely struck out.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 November 01, 2021. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific PROPOSED RULE. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through January 29, 2022, the agency may notify the Office of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the Utah State Bulletin. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Office of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE lapses.

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

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

The Proposed Rules Begin on the Following Page
NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R82-1-102 Filing ID 53938

Agency Information
1. Department: Alcoholic Beverage Control
Agency: Administration
Street address: 1625 S 900 W
City, state and zip: Salt Lake City, UT 84130-0408
Mailing address: PO Box 30408
City, state and zip: Salt Lake City, UT 84130-0408

Contact person(s):
Name: Email:
Vickie Ashby 801-977-6801 vickieashby@utah.gov
Angela Micklos 801-977-6801 afmicklos@utah.gov

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

General Information
2. Rule or section catchline:
R82-1-102. Definitions

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule amendment is necessary to implement provisions of H.B. 371 passed in the 2021 General Session. H.B. 371 (2021) granted the Alcoholic Beverage Commission (Commission) the authority to define "controlled group of breweries." The proposed definition is based on the IRS definition for taxation purposes.

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 the 2021 General Service, the legislature granted the Commission the authority to define "controlled group of breweries" related to the reduced markup for a small producer. Per authority referenced in Subsection 32B-1-102(27), this rule amendment defines "controlled group of breweries" for purposes of which entities qualify for a reduced markup for being a small producer.

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

<table>
<thead>
<tr>
<th>A) State budget:</th>
</tr>
</thead>
<tbody>
<tr>
<td>None--Any anticipated cost or savings to the state budget are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B) Local governments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>None--Any anticipated cost or savings to local governments are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C) Small businesses (&quot;small business&quot; means a business employing 1-49 persons):</th>
</tr>
</thead>
<tbody>
<tr>
<td>None--Any anticipated cost or savings to small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
</tr>
</tbody>
</table>

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<tr>
<th>D) Non-small businesses (&quot;non-small business&quot; means a business employing 50 or more persons):</th>
</tr>
</thead>
<tbody>
<tr>
<td>None--Any anticipated cost or savings to non-small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
</tr>
</tbody>
</table>

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<tr>
<th>E) Persons other than small businesses, non-small businesses, state, or local government entities (&quot;person&quot; means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</th>
</tr>
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<tbody>
<tr>
<td>Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
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<tr>
<th>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</th>
</tr>
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<tbody>
<tr>
<td>There are no fees associated with this process. Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.</td>
</tr>
</tbody>
</table>
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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to implement the provisions of H.B. 371 (2021). The proposed rule defines "controlled group of breweries." Any anticipated cost or savings were calculated during the legislative process.

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<tbody>
<tr>
<td>State Government</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<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>Total Fiscal Cost</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

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

B) Department head approval of regulatory impact analysis:

The Executive Director, Tiffany Clason, 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:

<table>
<thead>
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<th>Subsection</th>
<th>Section 32B-2-202</th>
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<tr>
<td>32B-1-102(27)</td>
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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Tiffany Clason, Executive Director Date: 09/14/2021

R82. Alcoholic Beverage Control, Administration.
R82-1. General.
R82-1-102. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning:

1) "Act" means the Alcoholic Beverage Control Act, Title 32B.

2) "Commission" means the Utah Alcoholic Beverage Control Commission.

3) "Controlled Group of Breweries" means a group of incorporated or non-incorporated breweries that are related directly or indirectly through more than 50% common ownership or control by any person or persons. Additionally, a brewery is considered to be part of a controlled group of breweries if more than 50% of the brewery is owned or controlled directly or indirectly either by, or in common with, another brewery or breweries.

4) "Department " or "DABC" means the Utah Department of Alcoholic Beverage Control.

5) "Director" means the director of the Department of Alcoholic Beverage Control.

6) "Dispensing System" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

7) "Guest Room" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.
(8) "Manager" means, depending on the context, a:
(a) a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company;
(b) an individual chosen or appointed to direct, supervise, or administer the operations at a licensed business; or
(c) an individual who supervises the furnishing of an alcoholic product to another, regardless of the exact employment title that the person holds.

(9) "Person" means the same as that term is defined in Section 68-3-12.5.

(10) "Point of Sale" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the Department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premises consumption where the beer is displayed or offered for sale.

(11) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(12) "Staff" or "authorized staff member" means a person duly authorized by the director of the Department to perform a particular act.

(13) "subpart" refers to subparagraphs of this rule.

(14) "Utah Alcoholic Beverage Control Laws" means any Utah statutes, Commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(15) "Warning Sign" means a sign no smaller than 8.5 inches high by 11 inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health [D]epartment contact information shall be no smaller than 20 point bold.

KEY: alcoholic beverages
Date of Last Change: 2021[October 27, 2020]
Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-208; 32B-1-304(7)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R82-1-304 Filing ID 53939

Agency Information
1. Department: Alcoholic Beverage Control
Agency: Administration

Street address: 1625 S 900 W
City, state and zip: Salt Lake City, UT
Mailing address: PO Box 30408
City, state and zip: Salt Lake City, UT 84130-0408

Contact person(s):
Name: Phone: Email:
Vickie Ashby 801-977-6801 vickieashby@utah.gov
Angela Micklos 801-977-6800 afmicklos@utah.gov

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

General Information
2. Rule or section catchline:
R82-1-304. Background Checks for Resort Licenses

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule amendment is necessary to implement provisions of H.B. 371 passed in the 2021 General Session. H.B. 371 (2021) granted the Alcoholic Beverage Commission the authority to define "engages in management" of an airline, railroad, or other public conveyance regarding Public Service Permittees.

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):
Per authority referenced in Subsection 32B-1-304(7)(a), this rule amendment adds "(a)" to a statutory citation; and per the authority in Subsection 32B-1-304(7)(b), this rule adds a new provision for background checks for Public Service Permittees to define "engages in management."

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
None--Any anticipated cost or savings to the state budget are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.
NOTICES OF PROPOSED RULES

B) Local governments:

None—Any anticipated cost or savings to local governments are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None—Any anticipated cost or savings to small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None—Any anticipated cost or savings to non-small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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 fees associated with this process. Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to implement the provisions of H.B. 371 (2021). For the purpose of background checks, the proposed rule defines "engages in the management" of an airline, railroad, or other public conveyance regarding Public Service Permits. Any anticipated cost or savings were calculated during the legislative process.

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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director, Tiffany Clason, 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 32B-1-304(7)(b) | Section 32B-2-202
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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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
Agency head or designee, and title: Tiffany Clason, Executive Director
Date: 09/14/2021

R82. Alcoholic Beverage Control, Administration.
R82-1. General.
R82-1-304. Background Checks for Resort Licensees.
(1) The authority for this rule is Subsection 32B-1-304(7)(a).
(2) This rule describes what "engages in the management" of a resort means for purposes of determining which individuals must undergo a background check as part of the application process for a resort license.
(3) As used in this section, "engages in the management of a resort licensee" means manages or controls:
(a) the daily operations of the business entity of the resort licensee; or
(b) the finances of the resort licensee.
(4) An individual who engages in the management of a resort licensee shall undergo a background check as part of the application process for obtaining a resort license.

R82-1-304.1. Background Checks for Public Service Permittees.
(1) The authority for this rule is Subsection 32B-1-304(7)(b).
(2) This rule describes what "engages in the management" of the airline, railroad, or other public conveyance means for the purposes of determining which individuals must undergo a background check as part of the application process for a public service permit.
(3) As used in this section, "engages in the management of the airline, railroad, or other public conveyance means manages or controls:
(a) the daily operations of the local branch of the entity that holds the public service permit; or
(b) the finances of the local branch of the entity that holds the public service permit.
(4) An individual who engages in the management of the airline, railroad, or other public conveyance shall undergo a background check as part of the application process for obtaining or renewing a public service permit.

KEY: alcoholic beverages
Date of Last Change: 2021[October 27, 2020]
Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-208; 32B-1-304(7)(a); 32B-1-304(7)(b)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R82-2-302
Filing ID 53940

Agency Information
1. Department: Alcoholic Beverage Control
Agency: Administration
Street address: 1625 S 900 W
City, state and zip: Salt Lake City, UT
Mailing address: PO Box 30408
City, state and zip: Salt Lake City, UT 84130-0408

Contact person(s):
Name: Vickie Ashby
Phone: 801-977-6801
Email: vickieashby@utah.gov

Name: Angela Micklos
Phone: 801-977-6800
Email: afmicklos@utah.gov

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

General Information
2. Rule or section catchline:
R82-2-302. Advertising, Promotion, and Listing of Products

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule amendment is necessary to clarify whether Type 5 package agencies have the ability to list products and prices online and over the phone. The clarification is a result of Alcohol Policy Workgroup discussions during the 2021 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):
Per authority referenced in Section 32B-1-206, this rule amendment specifies where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.
Fiscal Information

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

A) State budget:

None—This rule does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

B) Local governments:

None—This rule does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

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

None—This rule does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

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

None—This rule does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

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 does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

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 fees associated with this process. This rule does not create additional cost or savings. It is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency.

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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to clarify where, how, and what information a Type 5 package agency may provide in regards to each liquor item offered for sale at the package agency. This rule does not create additional cost or savings.

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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director, Tiffany Clason, 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 32B-1-206 | Section 32B-2-202

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1.
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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Tiffany Clason, Executive Director Date: 09/14/2021

R82. Alcoholic Beverage Control, Administration.
R82-2. Administration.
R82-2-302. Advertising, Promotion, and Listing of Products.

(1) Authority. This rule is made pursuant to [s]Section 32B-1-206, which authorizes the Commission to make rules regarding how the Department or a package agency may advertise an alcoholic product.

(2) A package agency may not advertise alcoholic beverages except:

   (a) a Type 1 package agency, as described in Section R82-2-301, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

   (b) a Type 2 package agency, as described in Section R82-2-301, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

   (c) a Type 5 package agency, as described in Section R82-2-301, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of Section R82-1-104 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

   (a) a Type 1 package agency, as described in Section R82-2-301, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

   (b) a Type 4 package agency, as described in Section R82-2-301, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

   (c) a Type 5 package agency, as described in Section R82-2-301, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency, [of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency], as follows:

(i) on the premises of the winery, distillery, brewery, or authorized tasting room;

(ii) at the entrance of the Type 5 package agency;

(iii) over the phone; or

(iv) on the internet.

KEY: alcoholic beverages
Date of Last Change: 2021/10/27
Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-1-206

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R82-2-306 Ref (R no.): Filing ID 53941

Agency Information

1. Department: Alcoholic Beverage Control
Agency: Administration
Street address: 1625 S 900 W
City, state and zip: Salt Lake City, UT
Mailing address: PO Box 30408
City, state and zip: Salt Lake City, UT 84130-0408

Contact person(s):

Name: Email:
Vickie Ashby 801-977-6801 vickieashby@utah.gov
Angela Micklos 801-977-6800 afmicklos@utah.gov

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

General Information

2. Rule or section catchline: R82-2-306. Operational Restrictions

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

This rule amendment is necessary to change the title of Section R82-2-306 as some provisions are restrictions, others are requirements, and some are simply options. It corrects the current rule which is inconsistent with Section 32B-2-605 by specifying that a Type 5 package agency may operate on Sundays or holidays if it is located at a licensed manufacturing facility and holds certain retail licenses. It also adds recordkeeping as a requirement to apply to all package agency types.
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 amendment changes the title of Section R82-2-306 from "Operational Restrictions" to "Operational Matters." It specifies that a Type 5 package agency may operate on Sundays or holidays if it is located at a licensed manufacturing facility and holds a bar license, to be consistent with statute (Section 32B-2-605). It also adds recordkeeping as a requirement to apply to all package agency types.

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**Fiscal Information**

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

   **A) State budget:**

   None—This rule does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

   **B) Local governments:**

   None—This rule does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

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

   None—This rule does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

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

   None—This rule does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

   **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 does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

   **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 fees associated with this process. This rule does not create additional cost or savings. It is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types.

   **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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to clarify operational matters, Sunday and holiday operating options for Type 5 package agencies, and recordkeeping requirements for all package agency types. This rule does not create additional cost or savings.

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.)

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*UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19*
R82-2. Administration.

or a bar license. The manufacturing facility holds a full-service restaurant license, a located at a manufacturing facility licensed by the Commission and Sundays and state and federal holidays if the package agency is of the Department. Type 5 package agencies may also be open on Type 2 package agencies may, at the discretion of the package agent, package agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type agencies, at the discretion of the Department, will purchase and purchase of inventory. ]Any new package agencies, at the discretion of the Department, will purchase and maintain their inventory of liquor.

(7) Recordkeeping. Records required by the Department shall be kept current and available to the Department for auditing purposes for at least three years.

KEY: alcoholic beverages

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R82-2-308 Filing ID 53942

Agency Information

1. Department: Alcoholic Beverage Control
Agency: Administration
Street address: 1625 S 900 W

R82. Alcoholic Beverage Control, Administration.

R82-2. Administration.


(1) This rule is made pursuant to [s]Section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10[.00] a.m. until 12[.00] midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. The type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, at the discretion of the package agent, be open as early as 8[.00] a.m. for sales to licensees with the approval of the Department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the Commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, or a bar license.

(b) Type 3 package agencies may operate from 10[.00] a.m. until 10[.00] p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department, provided the package agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10[.00] a.m. until 11[.00] a.m., Monday through Friday, and 10[.00] a.m. until 12[.00] midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. A Type 4 package agency in a resort that is licensed under Title 32B, Chapter 8, Resort License Act may operate 24 hours a day, Monday through Sunday to provide room service to the room of a guest of the resort.

(d) Any change in the hours of operation of any package agency requires prior Department approval[s] and shall be submitted in writing by the package agent to the Department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by [s]Section 32B-2-605, which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under Title 32B, Chapter 8, Resort License Act that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(3) Size of Outlet. The retail selling space devoted to liquor sales in a [Type 2 or 3 package agency must be at least one hundred square feet.

(4) Inventory Size. Type 2 and 3 package agencies must maintain at least [fifty] 50 code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(5) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(6) Purchase of Inventory. [Any]Any new package agencies, at the discretion of the Department, will purchase and maintain their inventory of liquor.

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

Agency head or designee, and title: Tiffany Clason, Executive Director Date: 09/14/2021
Fiscal Information

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

A) State budget:
None--This rule does not create additional cost or savings. It is necessary to update the rule to reflect current operational processes for package agencies with consignment inventory.

B) Local governments:
None--This rule does not create additional cost or savings. It is necessary to update the rule to reflect current operational processes for package agencies with consignment inventory.

C) Small businesses ("small business" means a business employing 1-49 persons):
None--This rule does not create additional cost or savings. It is necessary to update the rule to reflect current operational processes for package agencies with consignment inventory.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
None--This rule does not create additional cost or savings. It is necessary to update the rule to reflect current operational processes for package agencies with consignment inventory.

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 does not create additional cost or savings. It is necessary to update this rule to reflect current operational processes for package agencies with consignment inventory.

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 fees associated with this process. This rule does not create additional cost or savings. It is necessary to update this rule to reflect current operational processes for package agencies with consignment inventory.

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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to update this rule to reflect current operational processes for package agencies with consignment inventory. This rule does not create additional cost or savings.

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.)

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<td>Local Governments</td>
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</table>
**Agency Authorization Information**

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Tiffany Clason, Executive Director</th>
<th><strong>Date:</strong></th>
<th>09/14/2021</th>
</tr>
</thead>
</table>

R82. Alcoholic Beverage Control, Administration.
R82-2. Administration.
R82-2-308. Consignment Inventory Package Agencies.
(1) This rule is made pursuant to [s]Section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Purpose. At the discretion of the Department, liquor may be provided by the Department to a Type 2 and Type 3 [p]Package [a]Agency for sale on consignment pursuant to [s]Subsection 32B-2-605(5). This rule provides the procedures for such consignment sales.

(3) Application of the [R]ule.
(a) Consignment Inventory.
(i) The initial amount of consignment inventory furnished to the [p]Package [a]Agency shall be established by the Department's [audit manager].
(ii) The consignment inventory amount shall be posted to the Department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the Department's contract with the [p]Package [a]Agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the [p]Package [a]Agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the [p]Package [a]Agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the Department's contract with the [p]Package [a]Agency. In the event 12-month average sales are lower than the Package Agency's current consignment amount the Department may lower the consignment amount. If the consignment amount is to be reduced the Package Agency must pay for the difference through cash payment or returned inventory. Any adjustment to the consignment amount will be handled through a contract amendment or a new contract.

(b) Payments.
(i) Agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the Department.

(ii) Statements showing [all] unpaid debts and [all] applied credits will be generated and emailed to the agencies on the 20th of each month [on the next available working day of each month] on each Thursday after credit card payments have been posted that Wednesday to reflect credit card payments received. Ordered liquor inventory will now reflect 30 days to pay from the order date, instead of being due upon order. This generated weekly statement will reflect payments received against the oldest outstanding invoices first. Payments received over those previous statement balances will be credited chronologically against ordered inventory due after previous statements. It is the agent's responsibility to review the statement and contact the Department with any discrepancies prior to [due date of the payment date].
(iii) Agents [will remit payment to the Department on the 19th or next available working day of the following month after the last statement was generated] may in advance of the Department drawing payments via ACH, remit payment to the Department on balances due from outstanding invoices which have not received enough credit card payments or other payments to cover those outstanding balances. Payment will be for the statement total. If no other payment has been received by the due date, payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the Department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The Department may assess the legal rate of interest on the amount owed and the [Package Agency] may be referred to the Commission for possible termination of the contract and closure.

(v) Any delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the Department. Payment shall be made in accordance with the [Package Agency's] statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.
(i) Transfers, up or down, shall be adjusted to the [Package Agency's] [next] payment due the [Department].
(ii) Transfers into the Package Agency will add to the amount owed to the Department on the next check due to the Department.
(iii) Transfers out will subtract from the amount owed to the Department on the next check due to the Department.
(d) Credit and Debit Card Credits.
(i) Credit for credit and debit cards processed at the [Package Agency] will be posted to the [Package Agency] statement.
(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the Department [in order] to receive credit.

(e) Audits.
(i) [Any package agency that is on a consignment contract shall keep a daily log of sales.]
(ii) The [auditing division] Department shall audit the [Package Agency] at least twice each fiscal year.

(iii) The [Package Agency] is subject to a Department audit at any time.

KEY:  alcoholic beverages
Date of Last Change: 2021[October 27, 2020]
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE

<table>
<thead>
<tr>
<th>TYPE OF RULE:</th>
<th>Amendment</th>
</tr>
</thead>
</table>

| Utah Admin. Code | R82-3-102 |
| Ref (R no.): | Filing ID 53943 |

Agency Information

1. Department:  Alcoholic Beverage Control
2. Agency:  Administration
3. Street address:  1625 S 900 W

City, state and zip:  Salt Lake City, UT
Mailing address:  PO Box 30408
City, state and zip:  Salt Lake City, UT 84130-0408

Contact person(s):

- Vickie Ashby  801-977-6801  vickieashby@utah.gov
- Angela Micklos  801-977-6800  afmicklos@utah.gov

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

General Information

2. Rule or section catchline:
R82-3-102. Violation Schedule

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
This rule amendment is necessary to remove a reference to the January 2012 violation grid. It removes all date references, so this rule doesn't need to be continually modified. It also removes the provision that the Department of Alcoholic Beverage Control (DABC) will provide a copy since the violation grid is posted on the DABC's website. Interested parties may download a copy.

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 amendment removes all date references, as well as the provision that the DABC will provide a copy since the violation grid is posted on the DABC's website.

Fiscal Information

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

A) State budget:
None--This rule does not create additional cost or savings. It is necessary to remove all date references, as well as the provision that the DABC will provide a copy since the violation grid is posted on the DABC's website.

B) Local governments:
None--This rule does not create additional cost or savings. It is necessary to remove all date references, as well as the provision that the DABC will provide a copy since the violation grid is posted on the DABC's website.
Governments

Govt

narratives

this table. Inestimable impacts will be included in

are inestimable fiscal impacts, they will not be included in

includes fiscal impacts that could be measured. If there

or savings.

DABC’s website. This rule does not create additional cost

will provide a copy since the violation grid is posted on the

proposed rule change and noted it is necessary to remove

Beverage Control, Tiffany Clason, has reviewed the

name

impact this rule may have on businesses

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 Executive Director of the Department of Alcoholic

Beverage Control, Tiffany Clason, has reviewed the

proposed rule change and noted it is necessary to remove

all date references, as well as the provision that the DABC

will provide a copy since the violation grid is posted on the

DABC’s website.

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 fees associated with this process. This rule
does not create additional cost or savings. It is necessary
to remove all date references, as well as the provision that the
DABC will provide a copy since the violation grid is posted on the
DABC’s website.

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 does not create additional cost or savings. It is
necessary to remove all date references, as well as the
provision that the DABC will provide a copy since the
violation grid is posted on the DABC’s website.

Non-Small Businesses

Other Persons

Total Fiscal Cost

Fiscal Benefits

State Government

Local Governments

Small Businesses

Non-Small Businesses

Other Persons

Total Fiscal Benefits

Net Fiscal Benefits

B) Department head approval of regulatory impact

analysis:

The Executive Director, Tiffany Clason, has reviewed and

approved this fiscal analysis.

C) Small businesses ("small business" means a

business employing 1-49 persons):

None—This rule does not create additional cost or savings.

It is necessary to remove all date references, as well as
the provision that the DABC will provide a copy since the
violation grid is posted on the DABC’s website.

Non-small businesses (”non-small business” means a

business employing 50 or more persons):

None—This rule does not create additional cost or savings.

It is necessary to remove all date references, as well as
the provision that the DABC will provide a copy since the
violation grid is posted on the DABC’s website.

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 does not create additional cost or savings. It is
necessary to remove all date references, as well as the
provision that the DABC will provide a copy since the
violation grid is posted on the DABC’s website.

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 Executive Director of the Department of Alcoholic

Beverage Control, Tiffany Clason, has reviewed the

proposed rule change and noted it is necessary to remove

all date references, as well as the provision that the DABC

will provide a copy since the violation grid is posted on the

DABC’s website. This rule does not create additional cost
or savings.

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.)

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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</table>

Small Businesses

Non-Small Businesses

Other Persons

Total Fiscal Cost

Fiscal Benefits

State Government

Local Governments

Small Businesses

Non-Small Businesses

Other Persons

Total Fiscal Benefits

Net Fiscal Benefits

B) Department head approval of regulatory impact

analysis:

The Executive Director, Tiffany Clason, 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 32B-2-202

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the

following title of materials incorporated by references:

<table>
<thead>
<tr>
<th>First Incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Title of Materials Incorporated (from title page)</td>
</tr>
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</table>

Date Issued

September 28, 2021

Issue, or version

2021

Public Notice Information

9. The public may submit written or oral comments to

the agency identified in box 1. (The public may also

request a hearing by submitting a written request to the
A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Tiffany Clason, Executive Director  Date: 09/14/2021

R82. Alcoholic Beverage Control, Administration.
R82-3. Disciplinary Actions and Enforcement.
R82-3-102. Violation Schedule.

(1)(a) Authority. This rule is pursuant to [s]Sections 32B-2-202 and 32B-3-101 through 32B-3-207, which authorize the Commission to establish criteria and procedures for imposing sanctions against licensees and permittees as well as their officers, employees, and agents who violate statutes and Commission rules relating to alcoholic beverages.

(b) For purposes of this rule, holders of certificates of approval are also considered licensees.

(c) The Commission may revoke or suspend the licenses or permits[s], and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension.

(d) The Commission also may impose a fine against an officer, employee or agent of a licensee or permittee.

(e) Violations are adjudicated under procedures contained in [s]Sections 32B-3-101 [through 32B-3-207 and disciplinary hearings under Section R82-3-103.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the Commission for violations of the alcoholic beverage laws. It shall be used by Department decision officers in processing violations, and by hearing officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the Commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by [all]any Commission licensees and permittees and their officers, employees, and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under [s]Sections 32B-9-204 and 32B-9-305.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain fundamental licensing and permitting requirements may result in immediate suspension or forfeiture of the license or permit. Such failures are administered by issuance of an order to show cause requiring the licensee or permittee to provide the Commission with proof of qualification to maintain their license or permit, as outlined in Section R82-3-104.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Section R82-3-101, or been found by the Commission to be in violation of the Act or Commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the Commission.

(d) In addition to the penalty classifications contained in this rule, the Commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee, or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any Commission licensee or permittee for a period determined by the Commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the Department's sales list and a suspension of the Department's purchase of those products for a period determined by the Commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation; and

(iv) require a licensee to have a written responsible alcohol service plan as provided in Section R82-3-107.

(e) When the Commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee, or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee, or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30[-]days of the initial date established by the Commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The Commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The Department and Commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range:

Verbal warning from law enforcement or Department compliance officer[s] to revocation of the license or permit or up to a $25,000 fine or both. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's, or agent's violation file at the Department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or Department compliance officer[s], which is documented to a letter of admonishment to the licensee or permittee and the officer, employee, or agent involved. Law enforcement or Department compliance officer[s] shall notify management of the licensee or permittee when verbal warnings are given.
(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee, or agent.

(iii) Third occurrence of the same type of minor violation: a one[-] to five-day suspension of the license or permit and employment of the officer, employee, or agent; \[and\] or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee, or agent; or both.

(iv) More than three occurrences of the same type of minor violation: a six[-] to fifteen[-] day suspension to revocation of the license or permit and a six to fifteen[-] day suspension of the employment of the officer, employee, or agent, or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee, or agent, or both.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the monetary penalties for each of the charges in their respective categories, or both.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although \[the gravity of]\ the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit or up to a $25,000 fine and a combination of penalties.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department. The penalty shall range from a letter of admonishment to a $1,000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee, or agent.

(ii) Second occurrence of the same type of moderate violation: a three to fifteen[-] day suspension of the license or permit and a three to fifteen[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $500 to $1,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee, or agent; or both.

(iii) Third occurrence of the same type of moderate violation: a ten to twenty[-] day suspension of the license or permit and a ten to twenty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $1,000 to $2,000 fine for the licensee or permittee and up to a $100 fine for the officer, employee, or agent; or both.

(iv) More than three occurrences of the same type of moderate violation: a fifteen[-] day suspension to revocation of the license or permit and a fifteen to thirty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $2,000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee, or agent; or both.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health, and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department. The penalty shall range from a five to thirty[-] day suspension of the license or permit and a five to thirty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $500 to $3,000 fine for the licensee or permittee and up to a $300 fine for the officer, employee, or agent; or both.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department. The penalty shall range from a five to thirty[-] day suspension of the license or permit and a five to thirty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $500 to $3,000 fine for the licensee or permittee and up to a $300 fine for the officer, employee, or agent; or both.

(ii) Second occurrence of the same type of serious violation: a ten to ninety[-] day suspension of the license or permit and a ten to ninety[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $1,000 to $9,000 fine for the licensee or permittee and up to a $350 fine for the officer, employee, or agent; or both.

(iii) More than two occurrences of the same type of serious violation: a fifteen to sixty[-] day suspension to revocation of the license or permit and a fifteen to sixty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $9,000 to $25,000 fine for the licensee or permittee and up to a $700 fine for the officer, employee, or agent; or both.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension, or the sum of the monetary penalties for each of the charges in their respective categories, or both.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by Title 32B, Alcoholic Beverage Control Act, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the Department and military installations. Penalty range: Written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department on the first occurrence. The penalty shall range from a ten[-] day suspension to revocation of the license or permit, or up to a $25,000 fine or both.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or Department compliance officer(\[s\]) shall be forwarded to the Department. The penalty shall range from a ten[-] day suspension to revocation of the license or permit and a fifteen to thirty[-] day suspension of the employment of the officer, employee, or agent; \[and\] or a $1,000 to $9,000 fine for the licensee or permittee and up to a $300 fine for the officer, employee, or agent; or both.

(ii) More than one occurrence of the same type of grave violation: a fifteen[-] day suspension to revocation of the license or permit, and a fifteen to thirty[-] day suspension of the employment of the
the officer, employee or agent or a $3,000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent, or both suspension and fine.[\-]

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) The following table summarizes the penalty ranges contained in this subpart of the rule for licensees and permittees.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Frequency</th>
<th>Degree and Verbal[|] or Written</th>
<th>Warning</th>
<th>Fine</th>
<th>Suspension</th>
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<td></td>
<td>3,000</td>
<td>to 25,000</td>
<td>15 to X</td>
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(f) The following table summarizes the penalty ranges contained in this subpart of the rule for officers, employees, or agents of licensees and permittees.

<table>
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<tr>
<th>Table 2</th>
<th>Frequency</th>
<th>Degree and Verbal[|] or Written</th>
<th>Warning</th>
<th>Fine</th>
<th>Suspension</th>
<th>Revoke</th>
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<td>to 25</td>
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<td>75</td>
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<td>Moderate</td>
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<td>75</td>
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<td>500</td>
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<tr>
<td>Serious</td>
<td>1st</td>
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<td>300</td>
<td>to 50</td>
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<td>700</td>
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<td></td>
<td>500</td>
<td>to 180</td>
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</tbody>
</table>

(5) Aggravating and Mitigating Circumstances. The Commission and hearing officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Mitigating circumstances include:

(i) no prior warning history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Aggravating circumstances include:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with Title 63G-3, Chapter 3, Utah Administrative Rulemaking Act. The 2021 version of the violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection on the Department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is incorporated by reference as part of this rule.

KEY:  alcoholic beverages
Date of Last Change: 2021[February 25, 2020]
Authorized, and Implemented or Interpreted Law: 32B-2-202
Fiscal Information

General Information

2. Rule or section catchline:

R82-5-202. Retail License Renewals

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

This rule amendment is necessary to implement provisions of H.B. 371 passed in the 2021 General Session. H.B. 371 (2021) granted the Alcoholic Beverage Commission (Commission) the authority to establish parameters for "late renewals" including the associated fees.

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):

Prior to the statute change in H.B. 371 (2021), there was no provision that expressly allowed "late renewals". Thus, licensees who missed their renewal deadline had to apply for a new license, including new license and application fees. This rule amendment allows "late renewals" to pay their normal renewal fee plus a $300 late fee rather than an entirely new application fee.

Fiscal Information

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

A) State budget:

None--Any anticipated cost or savings to the state budget are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

B) Local governments:

None--Any anticipated cost or savings to local governments are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None--Any anticipated cost or savings to small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None--Any anticipated cost or savings to non-small businesses are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None--Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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

None--Any anticipated cost or savings are a result of statutory requirements of H.B. 371 (2021). Costs and savings for administering this change were calculated as part of the fiscal note. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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 Executive Director of the Department of Alcoholic Beverage Control, Tiffany Clason, has reviewed the proposed rule change and noted it is necessary to implement provisions of H.B. 371 (2021). H.B. 371 (2021) granted the Commission the authority to establish parameters for "late renewals" including the associated fees. This rule does not create additional cost or savings beyond what was anticipated during the legislative process.

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
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<tbody>
<tr>
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<td>Small Businesses</td>
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<tr>
<td>Non-Small Businesses</td>
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<tr>
<td>Other Persons</td>
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<td><strong>Total Fiscal Cost</strong></td>
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<tr>
<td>Fiscal Benefits</td>
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<td>Non-Small Businesses</td>
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<td>Net Fiscal Benefits</td>
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</table>

B) Department head approval of regulatory impact analysis:
The Executive Director, Tiffany Clason, 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 32B-2-202; Section 32B-5-202

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

   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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Tiffany Clason, Executive Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>09/14/2021</td>
</tr>
</tbody>
</table>

R82. Alcoholic Beverage Control, Administration.
R82-5. General Retail License Provisions.
R82-5-202. Retail License Renewals.

This rule is adopted pursuant to Section 32B-5-202, which authorizes the Commission to make rules permitting and establishing the parameters of late retail license renewals.

For purposes of this rule, "late renewal" means the Department's receipt, after the date of the statutory renewal deadline related to the retail license at issue, of the requisite documents and payment to renew a retail license.

The Department may accept a late renewal application for a retail license received at the Department's Administrative Office by 5 p.m. the 10th day of the month that follows the statutory renewal deadline for that retail license type. If the 10th of the month falls on a Saturday, Sunday, or state or federal holiday, the Department shall consider a completed renewal application that is received by 5 p.m. on the next business day following the weekend or holiday.

Retail licensees who fail to meet the deadline established in Section R82-5-202 must apply for a new retail license.

The licensee seeking late renewal shall submit to the Department:

1. Each document required for renewal pursuant to Section 32B-5-202;
2. The statutory renewal fee for that retail license; and
3. A $300 late fee.

KEY: alcoholic beverages

Date of Last Change: 2021[October 27, 2020]
Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5-304
General Information

City, state and zip: Salt Lake City, UT 84111-2316
Mailing address: PO Box 146741
City, state and zip: Salt Lake City, UT 84114-6741
Contact person(s):
Name: Larry Marx
Phone: 801-530-6254
Email: lmarx@utah.gov

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

General Information

2. Rule or section catchline:
R156-70a. Physician Assistant Practice Act Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Physician Assistant Practice Act Rule is amended in accordance with changes made by S.B. 27 and S.B. 28 during the 2021 General Session. Additionally, numerous formatting and other changes are made throughout this rule in accordance with Executive Order No. 2021-12 to clarify and update this rule to facilitate compliance and enforcement, and additional amendments are made in accordance with Executive Order No. 2021-1 to eliminate unnecessary regulation and reduce barriers to working.

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):
Nonsubstantive formatting changes are made throughout the rule for clarity. In addition, the following substantive amendments are proposed:
Section R156-70a-102 is amended to add definitions.
Section R156-70a-302 is amended to clarify existing examination requirements.
Section R156-70a-303 is amended under the authority of Subsection 58-1-308(5)(a)(ii)(B) to allow a physician assistant (PA) whose license was active and in good standing at the time of expiration to apply for reinstatement between two years and five years after the date of expiration. The proposed amendments will allow former Utah PA licensees whose licenses expired while active and in good standing, easier re-entry into practice by extending their reinstatement period from two years to five years. If these former PA licensees meet certain requirements, they will not need to demonstrate that they meet all current qualifications and submit a new application complete with all supporting documents as is required of an individual making an initial application for license.
Section R156-70a-304 is amended to clarify and simplify the PA continuing medical education (CME) requirements, and under Subsection 58-70a-501.1(5) as amended by S.B. 28 (2021), to require a PA who specializes in mental health care to fulfill their CME by completing the CME required to maintain their Certificate of Added Qualifications (CAQ) in psychiatry.
Section R156-70a-305 is deleted in its entirety because it is obsolete after changes made by S.B. 27 and S.B. 28 (2021).
Section R156-70a-501 is amended and renumbered to Section R156-70a-501.2. The proposed amendments: 1) update the rule in accordance with the changes in S.B. 27 and S.B. 28 (2021) from delegation of duties to collaborative practice; and 2) as mandated by Subsection 58-70a-501.2(6) as amended by S.B. 28 (2021), to establish supervision requirements for a PA engaging in the practice of mental health therapy while completing clinical practice hours to become specialized in mental health care.
New Section R156-70a-503 is added under the authority of Subsection 58-70a-102(10) to define certain conduct as "unprofessional conduct" in accordance with the changes made by S.B. 27 and S.B. 28 (2021) to a PA's scope of practice.
A rule hearing will be held electronically only before the Division via Google Meet on 10/18/2021. Meeting ID: meet.google.com/uyc-wavm-zqu; Phone Numbers: (US)+1 617-675-4444; PIN: 132 761 555 0815#

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The Division of Occupational and Professional Licensing (Division) estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit state agencies acting as businesses who employ PA, if these state agencies are able to more easily hire one or more experienced PAs who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts on these state agencies cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits the state agencies may experience from any resulting employment will vary widely depending on the requirements of the agencies and the individual characteristics of each PA. The remainder of these proposed amendments are expected to have no measurable impact on state government revenues or expenditure as none of the amendments are expected to impact state government practices or procedures beyond the mandates of S.B. 27 and SB. 28 (2021).
B) Local governments:

These amendments will affect health care entities that employ PA, which may include certain local government entities acting as businesses. The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit local governments acting as businesses who employ PAs, if they are able to more easily hire one or more experienced PAs who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that local government may experience from any resulting employment will vary widely depending on the requirements of the local government and the individual characteristics of each PA. The remainder of these proposed amendments are expected to have no measurable impact on local government revenues or expenditures as none of the amendments are expected to impact local government practices or procedures beyond the mandates of S.B. 27 and SB. 28 (2021).

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

These amendments will affect small businesses that employ PAs (North American Industry Classification System (NAICS) 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit small businesses who employ PAs, if they are able to more easily hire one or more experienced PAs who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a business may experience from any resulting employment will vary widely depending on the requirements of the business and the individual characteristics of each PA. The remainder of the proposed amendments are expected to have no measurable impact on non-small business revenues or expenditures as they only conform this rule to the statutory changes enacted by S.B. 27 and S.B. 28 (2021), with no fiscal impact to non-small business beyond those identified in the fiscal note available at https://le.utah.gov/~2021/bills/static/SB0027.html and https://le.utah.gov/~2021/bills/static/SB0028.html.

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

These amendments will affect non-small businesses that employ PAs (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The Division estimates that the proposed reinstatement amendments to Section R156-70a-303 may indirectly benefit non-small businesses who employ PAs, if they are able to more easily hire one or more experienced PAs who have been able to reinstate their license and enter into practice. The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a business may experience from any resulting employment will vary widely depending on the requirements of the business and the individual characteristics of each PA. The remainder of the proposed amendments are expected to have no measurable impact on non-small business revenues or expenditures as they only conform this rule to the statutory changes enacted by S.B. 27 and S.B. 28 (2021), with no fiscal impact to non-small business beyond those identified in the fiscal note available at https://le.utah.gov/~2021/bills/static/SB0027.html and https://le.utah.gov/~2021/bills/static/SB0028.html.

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 will affect licensed PAs, and the health care providers who collaborate with PAs or supervise PAs who are completing clinical practice hours to become specialized in mental health care. The proposed reinstatement amendments to Section R156-70a-303 will allow easier re-entry into practice for persons formerly licensed as a PA in Utah whose license expired while active and in good standing, and these amendments are expected to benefit those experienced PAs who choose to re-enter into practice. However, the full fiscal and non-fiscal benefits for such persons cannot be estimated because the resulting employment will vary substantially depending on the individual choices and characteristics of each formerly licensed PA. The remainder of the proposed amendments are not expected to result in a fiscal impact to these persons beyond those identified in the fiscal notes for S.B. 27 and S.B. 28 (2021), as the amendments only conform this rule to and implement the statutory changes enacted by S.B. 27 and S.B. 28 (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 compliance costs expected for affected persons since any costs were already considered when the Legislature passed S.B. 27 and S.B. 28 (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):

The Division proposes amendments to the Physician Assistant Practice Act Rule. Changes and updates were made in accordance with S.B. 27 and S.B 28 (2021). Further, the Division has made formatting changes throughout this rule to conform this rule to the Office of Administrative Rules’ Formatting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.
Small Businesses (less than 50 employees): The Division has found many small businesses employing Physician Assistants (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110). The proposed reinstatement amendments to Section R156-70a-303 may benefit small businesses who employ PAs, if they are able to more easily hire one or more experienced PAs who have been able to reinstate their license and enter into practice. However, the fiscal impacts cannot be estimated due to the lack of data necessary for such a calculation. Further, the expected measurable fiscal impact on small business revenues are identified in the fiscal notes under S.B. 27 and S.B. 28 (2021).

Regulatory Impact to Non-Small Businesses (50 or more employees); There are currently several non-small businesses that employ PAs (NAICS 621399, 621112, 621111, 621330, 622110, 622310, 621493, 623220, 621420, 621420, 623110) in Utah. There is expected to be a similar economic benefit for licensees with the proposed reinstatement amendments to Section R156-70a-303, thus, the same rationale applies for non-small business as described above for small business. However, the full benefits are inestimable for the reasons stated above with the expected measurable fiscal impact on non-small business revenues are identified in the fiscal notes under S.B. 27 and S.B. 28 (2021). Margaret W. Busse, 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<tbody>
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<td>Local Governments</td>
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<td>Small Businesses</td>
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<td>Non-Small Businesses</td>
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<tr>
<td>Other Persons</td>
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<td><strong>Total Fiscal Cost</strong></td>
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<tr>
<td>Fiscal Benefits</td>
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Non-Small Businesses $0 $0 $0
Other Persons $0 $0 $0
Total Fiscal Benefits $0 $0 $0
Net Fiscal Benefits $0 $0 $0

B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Commerce, Margaret W. Busse, 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:

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<thead>
<tr>
<th>Section</th>
<th>Subsection</th>
<th>Subsection</th>
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<tr>
<td>58-70a-101</td>
<td>58-1-106(1)(a)</td>
<td>58-1-202(1)(a)</td>
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</tbody>
</table>

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: 11/01/2021
B) A public hearing (optional) will be held:

<table>
<thead>
<tr>
<th>On:</th>
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<tbody>
<tr>
<td>10/18/2021</td>
<td>9:00 AM</td>
<td>Rule hearing will be held electronically only before the Division via Google Meet (see details in Box 4 above).</td>
</tr>
</tbody>
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10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Mark B. Steinagel, Division Director | Date: 09/14/2021 |
R156-70a-102. Definitions.
In addition to the definitions in Title 58, Chapter 1 and 20a, as used in this rule, Chapter 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 70a, Physician Assistant Practice Act, the following rule definitions supplement the statutory definitions:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period. "ACMEE" means the Accreditation Council for Continuing Medical Education.
(2) "CAQ" means a Certification for Added Qualification issued by the NCCPA.
(3) "CME" means continuing medical education.
(4) "NCCPA" means the National Commission on Certification of Physician Assistants.
(5) "PANCE" means the NCCPA's Physician Assistant National Certifying Examination.
(6) "PANRE" means the NCCPA's Physician Assistant National Recertifying Examination.

R156-70a-103. Authority - Purpose.
This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 70a, Physician Assistant Practice Act.

R156-70a-104. Organization - Relationship to Rule R156-1.
The organization of this rule and its relationship to Rule R156-1, General Rule of the Division of Occupational and Professional Licensing, is as described in Section R156-1-107.

R156-70a-302. Qualification for Licensure - Examination Requirements.
Under Subsection 58-70a-302(5)(a), the examination requirement for licensure as a physician assistant is a passing score on the National Commission on Certification of Physician Assistants (NCCPA) examination.

(1) the PANCE; or
(2) the PANRE.

R156-70a-303. Renewal Cycle - Procedures.
Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle, applicable to all licensees under Title 58, Chapter 70a, Physician Assistant Practice Act, is established by rule in Section R156-1-308a. Renewal procedures shall be in accordance with Sections R156-1-308 through R156-1-308a.

(3) Under Subsection 58-1-308(5)(a)(ii)(B), and subject to Subsection R156-1-308g(3)(b), an applicant whose license was active and in good standing at the time of expiration may apply for reinstatement between two years and five years after the date of expiration, as follows:
(a) submit a reinstatement application demonstrating compliance with the requirements and conditions of license renewal;
(b) pay the license renewal and reinstatement fees for the current licensure cycle;
(c) submit evidence that the applicant:
(i) has completed the qualified CME hours required for each preceding two-year licensure cycle in which the license was expired; or
(ii) has current NCCPA certification;
(d) for an applicant who seeks to practice in the mental health specialties outside of a collaborative agreement with a psychiatrist:
(ii) if required by the Division under Subsection 58-70a-501.2(5), collaborate for a specified duration with a physician who is board certified in psychiatry; and
(e) upon request:
(ii) meet with the Board to evaluate the applicant's ability to safely and competently practice; and
(ii) comply with Division requirements as recommended by the Board, such as collaboration with or practice under the supervision of a physician or physician assistant for a specified duration.

R156-70a-304. Continuing Education.
(1) Under Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE/CME) requirements for a physician assistant are as follows established in this section.
(1)(2) Any A physician assistant shall complete at least 40 CME/CPE hours during each two-year licensure cycle, that include:
(i) at least 34 CME hours in category 1 offerings as established by the ACCME;
(ii) under Subsection 58-70a-501.1(5), if the physician assistant specializes in mental health care, the CME required to maintain their CAQ in psychiatry; and
(iii) under Subsection 58-70a-303(4), if the physician assistant is a recommending medical provider, continuing education required under Section 26-61a-106.

(2) A licensee's documentation to the Division of current national NCCPA certification by NCCPA shall fulfill/be deemed to meet the requirements in this section of Subsections (2)(a)(i) or (ii).

(2)(a) (i) A physician assistant may fulfill up to 15% of their CPE/CME requirement by providing volunteer services within the scope of their license at a qualified location, in accordance with Section 58-13-3. For every four documented hours of volunteer services, the licensee may earn one hour of CPE/CME credit.
(ii) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(3) Approved providers for ACCME offerings include the following:
(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or
(b) programs approved by other health-related continuing education approval organizations, if the education is:
(i) offered by a healthcare accredited agency, and
(ii) related to the practice as a physician assistant.

(4) A maximum of six CPE hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.
(6)[(6)] CME credit shall be recognized in accordance with ACCME accreditation. CME requirements under Section 58-1-308d.

R156-70a-305. Exemptions from Licensure.  
"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

1. The circumstances and purpose under which any temporary supervision is permitted;
2. The temporary supervision duties to be performed by the physician assistant;
3. The amount of temporary supervision that is allowed; and
4. How the physician will review the activities of students while under temporary supervision.

R156-70a-501.2. [Working Relationship and Delegation of Duties]Supervision Requirements for Engaging in the Practice of Mental Health Therapy While Completing Clinical Practice Hours.  
In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

1. The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient’s health, safety, and welfare will not be adversely compromised. Physician assistants may authenticate with their signature any form that may be authenticated by a physician’s signature.

2. There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

3. The physician and physician assistant shall review sufficient practice information which may include patient charts and medical records to ensure that the patient’s health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for quality review that are appropriate for the working relationship.

4. A supervising physician may not supervise more than four full-time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

Under Subsections 58-70a-501.2(6)(b) and (c), a physician assistant specializing in mental health care who is in the process of completing supervised clinical practice hours under Subsection 58-70a-501.1(4)(d)(i) or (ii), or completing collaborative clinical practice hours under Section 58-70a-501.1(4)(d)(iii), may engage in the practice of mental health therapy in accordance with the following supervision standards:

1. A supervisor shall be licensed in good standing in the jurisdiction in which the supervision occurs.
2. A supervisor shall:
   a. ensure that the supervisee complies with confidentiality requirements and meets the local standards of care in the provision of services while under supervision; and
   b. monitor the performance of the supervisee for compliance with applicable mental health statutes for appropriate and humane treatment of patients, and recognize a duty to report violations to the Division.

3. The supervisor and supervisee shall submit appropriate documentation to the Division for work completed by the supervisee evidencing the performance of the supervisee during the period of supervision, including the supervisor’s evaluation of the supervisee’s competence to practice mental health therapy.

R156-70a-503. Unprofessional Conduct.  
Under Subsection 58-70a-102(10), "unprofessional conduct" includes:

1. Violating a federal or state law relating to controlled substances, including unprofessional conduct defined in Section R156-37-502;
2. Misrepresentation of the physician assistant's education, training, or qualifications to practice independently;
3. Failing to comply with:
   a. Collaboration policies and procedures;
   b. A collaborative practice agreement; or
   c. A requirement of supervision while completing clinical psychotherapy practice hours;
4. Failing to comply with Section 58-37-19, regarding discussion with a patient or the patient's guardian before issuing an initial opiate prescription; or
5. Failing to practice within the physician assistant's skills and scope of competence, in accordance with Subsection 58-70a-102(2) and Sections 58-70a-501 and 58-70a-501.2.

KEY: licensing, physician assistants
Date of Last Change: [June 21, 2018]2021
Notice of Continuation: June 22, 2021
Authorizing, and Implemented or Interpreted Law: 58-70a-101; 58-1-106(1)(a); 58-1-202(1)(a)
NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R277-113  Filing ID 53970

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
   Mailing address: PO Box 144200
   City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):
   Name: Angie Stallings
   Phone: 801-538-7830
   Email: Angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
   R277-113. LEA Fiscal and Auditing Policies

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
   This rule is being amended because Utah Schools of the Deaf and the Blind (USDB) are already subject to many similar requirements as a state agency.

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 amendments include the rule definitions to take USDB out of the general coverage of this rule. The amendments further clarify that USDB would still be subject to donation and gift policy requirements, regulations established by this rule for school sponsored activities, and compliance with relevant provisions of state and federal law.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
   A) State budget:
   This rule change is expected to have some small fiscal impact on state government revenues or expenditures. The amendments affect only the USDB which are expected to create some savings for the agency that are not directly measurable.

   B) Local governments:
   This rule change is not expected to have fiscal impacts on local governments' revenues or expenditures. The amendments to this rule affect only USDB.

   C) Small businesses ("small business" means a business employing 1-49 persons):
   This rule change is not expected to have fiscal impacts on small businesses’ revenues or expenditures. The amendments to this rule affect only USDB.

   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 to this rule only affect USDB.

   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 to this rule only affect USDB.

   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
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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<td>Net Fiscal Benefits</td>
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</table>

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:

<table>
<thead>
<tr>
<th>Subsection 53E-3-401(4)</th>
<th>Section 53E-3-602</th>
<th>Subsection 53G-5-404(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subsection 53E-3-501(1)(e)(i)</td>
<td>Section 53E-3-603</td>
<td>Article X, Section 3</td>
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<tr>
<td>Subsection 53E-3-501(1)(e)(iv)</td>
<td>Section 53E-5-202</td>
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</table>

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head, or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: 09/15/2021 |

R277. Education, Administration.
R277-113. LEA Fiscal and Auditing Policies.
R277-113-1. Authority and Purpose.

(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;
(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;
(e) Section 53E-3-602, which allows the Board to approve auditing standards for LEA governing boards;
(f) Section 53E-3-603, which requires the Board to verify accounting procedures of LEA governing boards for the purpose of determining the allocation of Uniform School Funds;
(g) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system;
(h) Subsection 53G-5-404(4), which requires charter schools to make the same annual reports required of other public schools, including an annual financial audit report; and
(i) ESSA, which requires states to revise and redesign school accountability systems.

(2) The purpose of this rule is to:
(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;
(b) provide minimum standards, procedures and definitions for LEA policies;
(c) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;
Standards Board whose purpose is to establish GAAP for state and federal statutes, regulations, and the terms and conditions of state and federal awards; and
(ii) execution of transactions in compliance with:
(A) all state and federal statutes and regulations; and
(B) the terms and conditions of state or federal awards; and
(c) safeguard funds, property, and other against loss from unauthorized use or disposition.

(11) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(12) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(13) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

(14) "Operating LEA" means an LEA that has received minimum school program funds or federal funds and is providing educational services during a fiscal year, such as an LEA in a start-up period.

(15) "Provided, sponsored, or supported by a school" has the same meaning as defined in Section R277-407-2.

(16) "Provided, sponsored, or supported by a school" does not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53G-7-704 through 53G-7-707.

(17) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).


(19) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.


(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide training and informational materials for use by LEA governing boards in establishing their audit committees and internal audit programs in compliance with Section 53G-7-402.

(4) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(5) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.
R277-113-4. LEA Audit Responsibilities.

(1) The presiding officer of an LEA governing board shall ensure that the members of the governing board and audit committee are provided with training on the requirements of Title 53G, Chapter 7, Part 4, Internal Audits, and this Section R277-113-4 as part of the member on-boarding process.

(2) The training described in Subsection (1) shall:
   (a) comply with Title 63G, Chapter 22, State Training and Certification Requirements; and
   (b) use the online training and informational materials provided by the Superintendent in accordance with Subsection R277-113-3(3).

(3) An LEA governing board shall:
   (a) designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1); and
   (b) maintain the following information on the LEA's website:
      (i) names of the governing board members who serve on the audit committee; and
      (ii) if required by Subsection 53G-7-402(2);
      (A) the name and contact information of the internal audit director; and
      (B) a copy of the LEA's annual audit plan.

(4) An LEA audit committee shall:
   (a) ensure the LEA obtains all audits, agreed-upon procedures, engagements, and financial reports required by Section 51-2a-201 and Subsection 53G-5-404(4);
   (b) provide an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if LEA administration is involved;
   (c) ensure that corrective action on findings, concerns, issues and exceptions reported by independent external auditors, internal auditors, or other regulatory bodies are resolved in a timely manner by LEA administration;
   (d) present, as appropriate, information and reports from the audit committee's meetings to the LEA board; and
   (e) receive, as appropriate, reports of reviews, monitoring, or investigations conducted by LEA administration and ensure appropriate corrective action is taken in a timely manner.

(5) With regards to engagements completed by an independent external auditor, an LEA audit committee shall:
   (a) manage the audit procurement and quality process in compliance with Title 63G, Chapter 6a, State Procurement Code and Rule R123-5;
   (b) ensure that the independent external auditor has access to directly communicate with the audit committee;
   (c) review disagreements between independent external auditors and LEA administration;
   (d) consider LEA responses to audits or agreed-upon procedures; and
   (e) determine the scope and objectives of other non-audit services, as necessary.

(6) An LEA audit committee shall if required by Section 53G-7-402:
   (a) establish an internal audit program that provides internal audit services for the programs administered by the LEA;
   (b) advise the LEA board in the appointment of an audit director or in contracting for internal audit services in accordance with Subsection 53G-7-402(3);
   (c) conduct or advise the LEA board in an annual evaluation of the internal audit director or contractors providing internal audit services;
   (d) prioritize the internal audit plan based on risk;
   (e) receive regular updates on the internal audit plan and internal audit project progress; and
   (f) receive final internal audit reports from internal auditors or contractors providing internal audit services.

R277-113-5. LEA Fiscal Responsibilities and Required Fiscal Policies.

(1) An LEA shall review the LEA's fiscal policies and procedures regularly.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies and procedures enacted by the LEA specific to job function.

(3) LEA fiscal policies and procedures shall be available at each LEA main office, at individual public schools, and be publicly available on the LEA's website.

(4) LEA fiscal policies, procedures, and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this R277-113.

(6) An LEA fiscal policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

(8) An LEA shall ensure that the LEA's written fiscal policies and procedures address all applicable state and federal statutes and regulations.

(9) DEE fiscal policies shall include the following:
   (a) a program accounting policy that establishes internal controls and procedures to record program revenues and expenditures in accordance with:
      (i) GAAP; and
      (ii) the school fee provisions in Section R277-407-13;
   (b) a program accounting policy that:
      (i) accurately reflects the use of funds for allowable costs and activities;
      (ii) requires that transactions be recorded when they occur;
      (iii) allows adjusting journal entries during the year and at the end of the year, in accordance with GAAP; and
      (iv) requires that initial transactions, and adjusting entries if applicable, be recorded in the proper program, utilizing the following codes as established by the Board approved chart of accounts:
         (A) fund;
         (B) function;
         (C) program;
         (D) location; and
         (E) object or revenue code, as applicable;
NOTICES OF PROPOSED RULES

(c) a cash handling policy, which shall address cash receipts, including [cash, checks, credit cards, and other items], collected at the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and

(ii) compliance with Subsection[Utah Code] 51-4-2(2) regarding deposits.

(d) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:

(A) credit, debit, or purchase card transactions;

(B) employee reimbursements;

(C) travel; and

(D) payroll;

(ii) directives regarding the appropriate use of the LEA's tax exempt status number;

(iii) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;

(iv) compliance with:

(A) Title 63G, Chapter 6a, Utah Procurement Code,[;]

(B) Board rule regarding construction and improvements; and

(C) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.[;]

(v) may include procedures governing:

(A) student participation and incentives offered to students;

(B) allowable types of individual or group fundraising activities; and

(C) participation in school sponsored activities by volunteer or outside organizations;

(D) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;

(E) provisions establishing compliance with:

(I) Utah Constitution, Article X, Section 2, establishing a free public education system;

(II) R277-407; and

(III) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.[;]

(vi) procedures for:

(A) monetary donations;

(B) donations and gifts with donor restrictions;

(C) donations of gifts, goods, materials, or equipment; and

(D) donation of funds or items designated for construction or improvements of facilities;

(ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation written disclosure in accordance with IRS regulations;

(iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(v) procedures for:

(A) monetary donations;

(B) donations and gifts with donor restrictions;

(C) donations of gifts, goods, materials, or equipment; and

(D) donation of funds or items designated for construction or improvements of facilities;

(vi) procedures for:

(A) monetary donations;

(B) donations and gifts with donor restrictions; and

(C) donations of gifts, goods, materials, or equipment;

(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(viii) compliance with:

(A) Title 63G, Chapter 6a, Utah Procurement Code,[;]

(B) state law and Board rule regarding construction and improvements;

(C) IRS regulations and tax deductible directives; and

(D) Title IX;

(ix) procedures for:

(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;

(B) recognition of donors; or

(C) granting naming rights; and

((e)g) an LEA Financial Reporting policy, which shall include the following:

(i) a requirement that the LEA shall ensure external audits of LEA financial reporting, compliance, and performance, in accordance with GAAS and GAGAS;

(ii) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity;
(B) for state fiscal year 2020, if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and
(C) beginning with state fiscal year 2021, a requirement that the basis of accounting will be GASB; and
(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.
(10) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:
(a) budgeting;
(b) financial accounting, including a chart of accounts required for an LEA;
(c) student membership and attendance accounting;
(d) indirect costs and proration;
(e) financial audits;
(f) statistical audits; and
(g) compliance and performance audits.
R277-113-6. LEA Governing Board Fiscal Responsibilities.
(1) An LEA governing board shall have the following responsibilities:
(a) approve written fiscal policies and procedures required by Section R277-113-5;
(b) ensure, considering guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission, that LEA administration establish, document, and maintain an effective internal control system for the LEA;
(c) develop a process to regularly discuss and review LEA:
   (i) budget and financial reporting practices;
   (ii) financial statements and annual financial and program reports;
   (iii) financial position;
   (iv) expenditure of restricted funds to ensure administration is complying with applicable laws, regulations, and award terms and conditions; and
   (v) systems and software applications for compliance with financial and student privacy laws;
(d) receive the results of required annual audits from the external auditor in accordance with Section R123-5-5;
(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:
   (i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and
   (ii) receiving reports regarding the compliance and performance of entities with contracts or subawards and this rule; and
   (f) ensure the procurement process for an external auditor is in compliance with Section R123-5-4;
   (g) ensure LEA administration implements sufficient internal controls over the functions of entities with contracts or subawards to perform services on behalf of the LEA;
(2) An LEA governing board shall:
(a)(i) provide a hotline independent from administration for stakeholders to report concerns of fraud, waste, abuse, or non-compliance; and
(ii) post on the school's website in a readily accessible location:
   (A) a hotline phone number;
   (B) a hotline email; or
   (C) an online complaint form; or
   (b) post a link on the school's website in a readily accessible location with contact information for the Board's hotline.
(1) In accordance with ESSA, the Superintendent shall make public the per pupil expenditures of federal, state, and local funds, for each LEA and each school in the state.
(a) The Superintendent shall exclude expenditures that:
   (i) are non-current;
   (ii) do not reflect the day-to-day operations of an LEA or school;
   (iii) do not contribute to k-12 education; or
   (iv) are significant, unique expenditures that may skew data in certain years and thwart year-to-year comparison.
(b) The Superintendent shall publish and make available a comprehensive list of expenditures that are excluded from per pupil expenditure information.
(2) The Superintendent's school level report for each school shall include:
(a) average daily membership for the fiscal year covered by the report;
(b) an indicator if the school is:
   (i) a Title I School; or
   (ii) a Necessarily Existent Small School;
   (c) grade levels served by each school;
   (d) student demographics;
   (e) expenditures recorded at the school level and central expenditures allocated to each school by:
   (i) federal program expenditures; and
   (ii) state and local combined expenditures;
   (f) calculated per pupil expenditures; and
   (g) average teacher salary.
(3) The Superintendent may not report expenditure data for a school with an n-size of less than 10.
R277-113-8. LEA Accounting Requirements.
(1) Each LEA shall:
(a) record revenues and expenditures in compliance with the Board approved chart of accounts;
(b) record expenditures using school location codes that can be mapped to official school location codes used in the Board system of record;
(c) record expenditures using approved district and school codes in the Board system of record;
(d) submit expenditures using location codes in the Utah Public Education Financial System [UPEFS system];
(e) perform program accounting in accordance with GAAP and this rule; and
(f) beginning with the fiscal year that begins on July 1, 2021, accrue school fees, and fee waivers and use contra-revenue accounts to record fee waivers in the LEA's accounting system.
(2) Each LEA shall record and report the following expenditures for each school annually:
a) salaries;  
b) benefits;  
c) supplies;  
d) contracted services; and  
e) equipment.

3. If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.

4.(a) An LEA shall record centralized administrative costs to the administrative location code.

(b) The Superintendent shall allocate such costs to each school based on school enrollment.

5. The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).

6. If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

R277-113-9. Activities Provided, Sponsored, or Supported by a School.

1. An LEA or school shall comply with this Section R277-113-9 for all activities provided, sponsored, or supported by a school.

2. An LEA shall ensure that revenues raised from or during activities provided, sponsored, or supported by a school are classified, recorded, and deposited as public funds in compliance with LEA cash handling, program accounting, and expenditure of funds policies as required by Section R277-113-5.

3. An LEA shall:

   a) maintain records in sufficient detail to:
   
   i) track individual contributions and expenditures;
   
   ii) track overall financial outcomes; and
   
   iii) verify compliance with relevant regulations; and
   
   b) make records of activities available to parents, students, and donors, except as restricted by state or federal law.

4. An LEA may establish LEA-specific rules or policies:

   a) designating categories of activities or groups as provided, sponsored, or supported by the school; and
   
   b) regarding use of facilities or LEA resources.

5. An LEA shall document their annual review of fundraising activities that support or subsidize LEA or public school-sponsored clubs, activities, sports, classes, or programs to determine if the activities are provided, sponsored, or supported by a school.

6.(a) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

   b) An agreement under Subsection (6)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds, resources, and assets.

   c) An LEA shall review an agreement under Subsection (6)(a) with the LEA's insurer or legal counsel to consider risk to the LEA.

7. An LEA shall comply with this Subsection (7) for any activity not provided, sponsored, or supported by a school:

   a) An LEA shall conduct all transactions at arm's length;
   
   b) An LEA may not co-mingle revenue and expenditures with public funds; and
   
   c) A public school employee may only manage or hold funds consistent with Rule R277-107.


1. An LEA is responsible to ensure that its policies comply with the following:

   a) Utah Constitution Article X, Section 3;
   
   b) Title 63G, Chapter 6a, Utah Procurement Code;
   
   c) Title 51, Chapter 4, Deposit of Funds Due State;
   
   d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
   
   e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;
   
   f) Title 63G, Chapter 2, Government Records Access and Management Act;
   
   g) Title 53G, Chapter 7, Student https://le.utah.gov/xcode/Title53G/Chapter7/53G-7.html?c=C53G-7_2018012420180124 Fees;
   
   h) Title 53G, Chapter 6, Textbook Fees;
   
   i) Section 53E-3-403, Establishment of Public Education Foundations;
   
   j) Title 53G, Chapter 7, Part 7, Student Clubs Act;
   
   k) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
   
   l) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;
   
   m) Subsection 51-7-3(26), Definition of Public Funds;
   
   n) Title 53G, Chapter 7, Part 4, Internal Audits;
   
   o) Rule R277-407, School Fees;
   
   p) Rule R277-107, Educational Services Outside of Educator's Regular Employment;
   
   q) Rule R277-217, Utah Educator Standards;
   
   r) Rule R277-605, Coaching Standards and Athletic Clinics;
   
   s) Rule R123-5, Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations; and
   
   t) 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2. An LEA shall include the following requirements of Title IX in LEA policies:

   a) Fundraising shall equitably benefit males and females;
   
   b) Males and females shall have reasonably equal access to facilities, fields, and equipment;
   
   c) School sponsored activities shall be reasonably equal for males and females.


   The Utah Schools for the Deaf and the Blind shall comply with:

   1. Subsection R277-113-5(9)(f);  
   
   2. Section R277-113-9; and  
   

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

Date of Last Change: 2021[December 10, 2020]

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401(4); 53E-3-501(1)(e)
### NOTICE OF PROPOSED RULE

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<td>R277-116</td>
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### Agency Information

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<tr>
<td>City, state and zip:</td>
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<tr>
<td>City, state and zip:</td>
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### General Information

2. **Rule or section catchline:**

   R277-116. Audit Procedure

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

   This rule change removes duplication and provides additional clarity on the internal audit process.

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 amendments remove duplication and clarify how the Utah State Board of Education (USBE) Internal Audit Department interacts with audit clients.

### 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 impact on state government revenues or expenditures. The amendments remove duplication and provide additional clarity on the USBE internal audit process.

   **B) Local governments:**

   This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The amendments remove duplication and provide additional clarity on the USBE internal audit process.

   **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 remove duplication and provide additional clarity on the USBE internal audit process.

   **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 remove duplication and provide additional clarity on the USBE internal audit process.

   **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 remove duplication and provide additional clarity on the USBE internal audit process.

   **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.
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.)

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<thead>
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<th>Regulatory Impact Table</th>
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<td>Fiscal Benefits</td>
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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.

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 63I-5-201(4)
- Subsection 53F-2-204(2)
- Article X, Section 3
- Subsection 53E-3-401(4)
- Subsection 53E-3-401(9)
- Subsection 53E-3-501(1)(e)

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

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

- Agency head or designee, and title: Angie Stallings, Deputy Superintendent of Policy
- Date: 09/15/2021

R277. Education, Administration.
R277-116-1. Authority and Purpose.
   (1) This rule is authorized by:
   (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
   (b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the [entities it governs] Board;
   (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
   (d) Subsection 53E-3-501(1)(e), which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;
   (e) Section 53E-3-602, which allows the Board to approve auditing standards for school boards;
   (f) Section 53E-3-603, which makes the Board responsible for verifying audits of local school districts;
   (g) Subsection 53F-2-204(2), which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education; and
   (h) Subsection 53E-3-401(9), which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.
   (2) The purpose of this rule is to:
   (a) outline the role of the Chief Audit Executive[, Superintendent,] and [agency’s] audit client in the audit process; and
   (b) outline the Board's procedures for audits of [agency’s] audit clients.

(1) "Audit client" means an agency or an education entity.
(2) "Audit committee" means the same as that term is defined in Subsection 63I-5-102(5).
(3) "Audit plan" means a prioritized list of audits with associated resource requirements to be performed by the audit program that is reviewed, approved, and adopted at least annually by the Board.
(4) "Audit program" means the department that provides internal audit services for the Board that is directed by the Chief Audit Executive.
(5) "Chief Audit Executive" means the person who directs the audit program of the Board or the Chief Audit Executive's designee,

(a) in accordance with Title 63I, Chapter 5, the Utah Internal Audit Act and Board policies;
(b) is appointed by and reports to the audit committee; and
(c) is independent of the agencies subject to Board audit.
(6) "Draft audit report" means an unfinalized audit report compiled by the Chief Audit Executive that is classified as protected under Subsection 63G-2-305(10).
(7) "Education entity" means the same as that term is defined in Section 53E-3-401.
(8) "Final audit report" means a draft audit report accepted by the audit committee and the Board that is generally classified as public under Subsection 63G-2-301(3)(q).
(9) "Improper payment" means:
(a) a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements;
(b) an overpayment or underpayment to an eligible recipient;
(c) a payment to an ineligible recipient;
(d) a payment for a good or service not received; or
(e) a payment for an ineligible good or service;

(f) a payment that cannot be appropriately classified through an audit or review as a result of insufficient documentation.
(10) "Local administrator" means the [district superintendents or charter school] director of an audit client.
(11) "Sub recipient" means any entity that receives funds from an agency governed by the Board.

(a) "Questioned cost" means a cost that is questioned by the auditor because of an audit finding:
(i) which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of an award;
(ii) where the costs, at the time of the audit, are not supported by adequate documentation; or
(iii) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.
(b) A "questioned cost" is not an improper payment unless confirmed to be improper by the Board.

R277-116-3. Chief Audit Executive Authority and Responsibilities.

(1) The Chief Audit Executive shall direct the audit program in accordance with:
(a) Title 63I, Chapter 5, Utah Internal Audit Act;
(b) applicable Board bylaws and Board policies; and
(c) the USBE Internal Audit Policy and Procedures Manual.

(a) manage the audit program and facilitate the audit process;
(b) as approved and directed by the Board and audit committee;
(c) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and
(d) in accordance with the USBE Internal Audit Department Policy and Procedure Manual.

(b) act as the liaison for external audits of the Board;
(c) maintain the classification of any public record consistent with GRAMA;
(d) be subject to the same penalties under GRAMA as the custodian of a public record;
(e) publish final reports on the Internal Audit department website if appropriate; and

(f) The Chief Audit Executive shall make a copy of the USBE Internal Audit Department Policy and Procedure Manual available to the general public upon request.

(2) The Chief Audit Executive may contract with an LEA or other education entity to provide internal audit services to the LEA or other education entity if the contract is approved by the audit committee in accordance with Board contract policies.

R277-116-4. Superintendent Authority and Responsibilities.

(1) The Superintendent shall:
(a) provide resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;
(b) facilitate communications with those charged with governance, management, and staff as requested by the Chief Audit Executive or the audit committee to ensure the access necessary to perform an audit;
(c) ensure access to all personnel, records, data, and other agency information that the Chief Audit Executive or staff consider necessary to carry out their assigned duties;
(d) notify the Chief Audit Executive of external audits of entities governed by the Board;
(e) notify the agency that the Chief Audit Executive shall be the liaison for an external audit;
(f) support the audit program as otherwise requested by the audit committee or Chief Audit Executive; and
(g) facilitate appropriate action by the Board on issues identified in audits by:
(i) sending the final management response letter and form to the governing board and local administrator of an audited agency in response to the final audit report;
(ii) following up on final management response forms sent to the governing board and local administrator of an audited agency in accordance with timelines outlined in the management response letter, as monitored by the Chief Audit Executive, to ensure either:
(iii) the audited agency took appropriate action;
(iv) the audited agency’s lack of action is acceptable; or
(v) implementation of a corrective action plan in accordance with Rule R277-114; and
(vi) sending the closure letter to the governing board and local administrator of an audited agency when the Board accepts the audited agency’s management response.

(2) The [agency] auditor shall [wholly]fully cooperate and provide the Chief Audit Executive [and the internal audit staff]

(1) The Chief Audit Executive shall develop and recommend an audit plan to the Board and the audit committee based on the results of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Chief Audit Executive shall implement the audit plan.

(3) At the initiation of an audit, the Chief Audit Executive shall, as necessary:
   (a) send an engagement letter to the governing board and local administrator of the agency subject to the audit; and
   (b) hold an entrance conference with the agency's governing board.

(4) After conducting an audit, the Chief Audit Executive shall:
   (a) submit a preliminary draft audit report directly to:
      (i) the audit committee; and
      (ii) the Superintendent;
   (b) after complying with Subsection (4)(a), submit a preliminary draft audit report to the audited agency's governing board leadership, audit committee, and school administrators, as appropriate, and hold an exit conference, if necessary, to discuss the preliminary draft audit report; and
   (c) edit the preliminary draft audit report, as appropriate, based on feedback received.

(5) The Chief Audit Executive shall submit a revised draft audit report directly to:
   (a) the audit committee;
   (b) the Board;
   (c) the governing board and local administrator of the audited agency; and
   (d) the Superintendent.

(6) Within fourteen days of the Chief Audit Executive's submission of the revised draft audit report to the audited agency's governing board, and after the exit conference, if applicable, the audited agency's governing board shall:
   (a) provide a written response or comment on the draft audit report to the Chief Audit Executive and audit committee; or
   (b) file a written request for an extension with the Chief Audit Executive setting forth:
      (i) the justification for the extension request; and
      (ii) the extension time necessary to provide the response;
   (7) If the request for an extension is filed in accordance with Subsection (6)(b), the Chief Audit Executive shall respond after consulting with the Audit Committee Chair.

(8) Upon receiving written response and comment from the audited agency governing board, the Chief Audit Executive shall:
   (a) incorporate the written response, if any, received from the audited agency governing board into the draft audit report;
   (b) prepare Auditor concluding remarks, if appropriate; and
   (c) submit the revised draft audit report to the audit committee for recommendation to the Board.

(9) The audit committee may:
   (a) recommend an amended draft audit report for approval and adoption; or
   (b) send the amended draft audit report back to the Chief Audit Executive with instructions for additional review.

(10) Upon recommendation from the audit committee on the amended draft audit report, the Board may:
   (a) approve and adopt an amended draft audit report as the final audit report; or
   (b) send the amended draft audit report back to the audit committee with instructions for additional review.

(1) At the initiation of an audit, the Chief Audit Executive shall:
   (a) send an engagement letter to the local administrator, and if applicable, the audit committee chair of the audit client; and
   (b) hold an entrance conference with the individuals specified in Subsection (1)(a).

(2) The Chief Audit Executive shall conduct the audit in conformance with International Standards for the Professional Practice of Internal Auditing, inclusive of:
   (a) inquiring with the audit client to gain an understanding of the area being audited; and
   (b) requesting and obtaining evidence throughout the audit to perform necessary analyses to meet the scope and objectives of the audit.

(3) After conducting an audit, the Chief Audit Executive shall submit the draft audit report directly to the audit committee.

(4) After complying with Subsection (3), the Chief Audit Executive shall provide the individuals identified in Subsection (1)(a) with notice, which shall include:
   (a) the draft audit report;
   (b) a cover letter outlining the classification of the draft audit report in accordance with Title 63G, Chapter 2, Government Records Access and Management Act, including any limitations regarding the sharing or dissemination of the audit report;
   (c) an opportunity to request an exit conference within seven days of the date the draft report was provided, with the exit conference being held no later than 14 days from the date the draft report was provided; and
   (d) an explanation outlining the process to submit a response to the audit, as applicable in accordance with Subsection (7).

(5) If appropriate, and at the discretion of the Chief Audit Executive, the Chief Audit Executive may edit the draft audit report based on feedback and information received pursuant to Subsections (3) and (4).

(6) After finalizing the draft audit report, the Chief Audit Executive shall:
   (a) if necessary, submit the draft audit report directly to:
      (i) the audit committee;
      (ii) the Superintendent; and
   (b) provide additional individuals and entities, as appropriate; and

   (b) provide notice to the individuals identified in Subsection (1)(a), which shall include the same information required for notice under Subsection (4).
(7) Within 14 days of the Chief Audit Executive's notice to the individuals identified in Subsection (1)(a), the audit client may:
(a) provide a written response to the draft audit report to the Chief Audit Executive; or
(b) file a written request for an extension of time with the Chief Audit Executive setting forth:
(i) the justification for the extension request; and
(ii) the extension time necessary to provide the response.
(8) If a request for extension is filed in accordance with Subsection (7)(b), the Chief Audit Executive shall respond after consulting with the Audit Committee chair.
(9) Upon receiving a written response in accordance with Subsection (7)(a) or if no response to request for extension is received, the Chief Audit Executive shall:
(a) incorporate the written response, if any, into the draft audit report;
(b) prepare Chief Audit Executive concluding remarks, if appropriate; and
(c) submit the draft audit report to the audit committee and Superintendent.
(10) Upon receiving the draft audit report, consistent with Board bylaws, the audit committee shall provide direction to staff or propose recommendations to the Board regarding release of the audit or corrective action, including recommendations to confirm questioned costs as improper payments.

(1) An audit client who wishes to appeal Board action in response to an audit, shall follow the process outlined in Rule 277-102.
(2) An audit client who wishes to appeal a corrective action plan established by the Superintendent based on Board action in response to an audit, shall follow the process outlined in Section R277-114-5.

R277-116-7. Audit Reports.
(1) An audit report prepared by the Chief Audit Executive and staff shall be based upon audits of agency programs, activities, and functions.
(2) An audit report prepared by the Chief Audit Executive shall include identification of any information required by Subsection 63I-5-401(1)(I) related to the scope and objectives of the audit.
(3) The Chief Audit Executive shall provide, upon written request, a copy of a final audit report to the Office of Legislative Auditor General or the Office of the State Auditor.
(4) The Chief Audit Executive shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration
Date of Last Change: February 9, 2021
Notice of Continuation: April 14, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-3-501(1)(e); 53E-3-602; 53E-3-603; 53F-2-204

NOTICE OF PROPOSED RULE

<table>
<thead>
<tr>
<th>TYPE OF RULE: New</th>
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<tbody>
<tr>
<td>Utah Admin. Code Ref (R no.): R277-123</td>
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</table>

Agency Information

<table>
<thead>
<tr>
<th>1. Department:</th>
<th>Education</th>
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<tr>
<td>Agency:</td>
<td>Administration</td>
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<td>Board of Education</td>
</tr>
<tr>
<td>Street address:</td>
<td>250 E 500 S</td>
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<tr>
<td>City, state and zip:</td>
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<tr>
<td>Mailing address:</td>
<td>PO Box 144200</td>
</tr>
<tr>
<td>City, state and zip:</td>
<td>Salt Lake City, UT 84114-4200</td>
</tr>
<tr>
<td>Contact person(s):</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td>Angie Stallings</td>
</tr>
<tr>
<td>Phone:</td>
<td>801-538-7830</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Angie.stallings@schools.utah.gov">Angie.stallings@schools.utah.gov</a></td>
</tr>
</tbody>
</table>

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

General Information

2. Rule or section catchline:
R277-123. Process for Members of the Public to Report Violations of Statute and Board Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being enacted because Subsection 53E-3-401(8)(d) requires the Utah State Board of Education (Board) to establish a process in Board rule for an individual to bring a violation of statute or board rule to the attention of the Board.

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 filing and the reenacted rule):
This new rule is enacted to establish the aforementioned process.

Fiscal Information

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

A) State budget:
This rule is not expected to have independent fiscal impact on state government revenues or expenditures. This new rule is to comply with the requirements of Subsection 53E-3-401(8)(d).

B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This new rule is to comply with the requirements of Subsection 53E-3-401(8)(d).
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. This new rule is to comply with the requirements of Subsection 53E-3-401(8)(d).

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 new rule is not expected to have any fiscal impact on non-small businesses; revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This new rule is to comply with the requirements of Subsection 53E-3-401(8)(d).

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. This new rule is to comply with the requirements of Subsection 53E-3-401(8)(d).

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 proposed rule is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
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<tbody>
<tr>
<td>Fiscal Cost</td>
</tr>
<tr>
<td>State Government</td>
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<tr>
<td>Local Governments</td>
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<tr>
<td>Small Businesses</td>
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<tr>
<td>Non-Small Businesses</td>
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<tr>
<td>Total Fiscal Cost</td>
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<tr>
<td>Fiscal Benefits</td>
</tr>
<tr>
<td>State Government</td>
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<tr>
<td>Local Governments</td>
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<td>Small Businesses</td>
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<tr>
<td>Non-Small Businesses</td>
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<tr>
<td>Other Persons</td>
</tr>
<tr>
<td>Total Fiscal Benefits</td>
</tr>
<tr>
<td>Net Fiscal Benefits</td>
</tr>
</tbody>
</table>

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-3-401(4) Subsection 53E-3-401(8)(d) Article X, Section 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.)
A) Comments will be accepted until: 11/01/2021
R277. Education, Administration.
R277-123. Process for Members of the Public to Report Violations of Statute and Board Rule.

R277-123-1. 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-3-401(8)(d), which requires the Board to establish a process in rule for an individual to bring a violation of statute or board rule to the attention of the Board.

(2) The purpose of this rule is to establish a process for an individual to bring an alleged violation of statute or board rule to the attention of the Board.

(1) "Alleged violation" means an alleged violation of statute or board rule.
(2) "Hotline report" means a report of an alleged violation submitted to the Board's public education hotline.
(3) "Public education hotline" or "hotline" means the process and database maintained by the Board's internal audit staff where an individual may report an alleged violation.

R277-123-3. Individual Reports of Alleged Violations of Statute and Board Rule - Public Education Hotline Reports.
(1) An individual may report an alleged violation of statute or state board rule to the Board's public education hotline, which can be found at https://schools.utah.gov/internalaudit?mid=892&tid=3.
(2) A hotline report may be submitted through the internal audit webpage on the Board's website, form, mail, phone or email.
(3)(a) As part of the individual's hotline report, the individual may provide:
(i) a detailed description of the report or alleged violation, including any laws, regulations, or policies that are relevant;
(ii) the name of the individual, program, and, if applicable, funding, involved;
(iii) the location where the action or concern occurred;
(iv) the date the action or concern occurred; and
(v) any additional information, including:
(A) other witnesses; and
(B) supporting documents or evidence.
(4) The Board's internal audit staff shall conduct a preliminary analysis of an alleged violation and may request additional information from the individual.
(5) Upon review of the information described in this Section R277-123-3, internal audit staff may refer an alleged violation to the applicable LEA to be resolved or to applicable staff.
(6) An alleged violation related to special education or educator misconduct shall be reviewed and resolved in accordance with:
(a) for a report related to special education, R277-750; or
(b) for a report related to educator misconduct, Rules R277-210 through 217.
(7) If a response is requested by an individual or implied, internal audit or other staff shall respond to the individual who submits an alleged violation within three business days.
(8) If a staff member requests additional information from an individual who submitted an alleged violation, the individual shall respond to the request in a timely manner.
(9) If after two attempts to obtain information from an individual as described in Subsection (8) the individual does not respond to staff, the alleged violation shall be closed in the public education hotline.

R277-123-4. Resubmitted Alleged Violations of Statute or Board Rule.
(1) An individual whose alleged violation is referred to an LEA, state agency, or other entity for resolution, may resubmit the alleged violation to the public education hotline if:
(a) the alleged violation is not resolved by the LEA, state agency or other entity; and
(b) the alleged violation is within the jurisdiction or authority of the Board to resolve.
(2) Staff who receive a resubmitted alleged violation described in Subsection (1) may:
(a) request information from the LEA, state agency, or other entity; and
(b) conduct a preliminary investigation of the issue.

R277-123-5. Substantiated Allegations of Violations of Statute or Board Rule.
(1) If an alleged violation is substantiated or significant risk is identified, internal audit may recommend:
(a) that the Board's Audit Committee recommend prioritization of an audit to the full Board; or
(b) that Superintendent implement corrective or other action in accordance with R277-114.
(2) If an alleged violation is not substantiated, staff shall notify the individual who submitted the alleged violation.

KEY: hotline, report, and violations

Date of Last Change: 2021
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4) and (8)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

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<th>Filing ID</th>
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<tbody>
<tr>
<td>R277-312</td>
<td>53973</td>
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</table>
NOTICES OF PROPOSED RULES

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
Mailing address: PO Box 144200
City, state and zip: Salt Lake City, UT 84114-4200
Contact person(s):
Name: Angie Stallings
Phone: 801-538-7830
Email: Angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-312. Online Educator Licensure

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule will replace repealed Rule R277-512. (EDITOR’S NOTE: The proposed repeal of Rule R277-512 is under ID 53977 in this issue, October 1, 2021, of the Bulletin.)

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 new rule updates terminology in anticipation of the Utah Schools Information Management System (USIMS) and is consistent with changes to the licensing process.

Fiscal Information

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

A) State budget:
This proposed rule is not expected to have significant fiscal impact on state government revenues or expenditures. This rule is largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

B) Local governments:
This proposed rule is not expected to have significant fiscal impact on local governments' revenues or expenditures. This new rule replaces Rule R277-512. Changes between the rules are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

C) Small businesses (*small business* means a business employing 1-49 persons):
This proposed rule is not expected to have significant fiscal impact on small businesses' revenues or expenditures. This new rule replaces Rule R277-512. Changes between the rules are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

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 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 proposed rule is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This new rule replaces Rule R277-512. Changes between the rules are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

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. This new rule replaces Rule R277-512. Changes between the rules are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

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. 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.

UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19

39
revenues per year. In addition, this new rule is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

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.)

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<td>Total Fiscal Benefits</td>
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</tbody>
</table>

| Net Fiscal Benefits     | $0         | $0     | $0     |

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:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Subsection</th>
<th>Article X, Section 3</th>
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<tr>
<td>53E-3-501(1)(a)</td>
<td>53E-3-401(4)</td>
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</table>

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: 11/01/2021

10. This rule change MAY become effective on:

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>09/15/2021</td>
</tr>
</tbody>
</table>

R277. Education, Administration.
R277-312. Online Educator Licensure.
R277-312-1. 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-3-501(1)(a), which directs the Board to make rules regarding the certification of educators; and
(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
(2) The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained for online educator license transaction processes.

(1)(a) "EdUcate" means a part of USIMS, and successor to the database known as CACTUS, which is the electronic database maintained on educator licenses and license applications, which may include:
(i) personal directory information;
(ii) educational background;
(iii) endorsements;
(iv) employment history;
(v) professional development information;
(vi) evidence of criminal background checks; and
(vii) a record of disciplinary action taken by the Board against the educator.
(b) Information contained in an individual's EdUcate file may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.
(2) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and Blind.
(3) "License," for purposes of this rule, has the same meaning as described in 29 Subsection 53E-6-102(3).
(4) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent in EdUcate.

(5) "License transaction" means the interactions between a license holder or applicant and the Superintendent that may result in issuance of:
   (a) a license;
   (b) a renewal of a license; or
   (c) a modification of a license or license record.

(6) "Online license transaction" means those license transactions that take place through EdUcate.

(7) "USIMS" or "Utah Schools Information Management System" means a comprehensive tool maintained by the Superintendent for collecting, processing, providing oversight, and reporting on education data for the state.

(8) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.


(1) Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to any license transaction, regardless of whether the transactions occur online or by other means.

   (2)(a) Educators may receive an electronic or paper verification of a licensure transaction.

   (b) A verification provided under Subsection (2)(a) is not an educator license.

(3) EdUcate shall be the final repository of educator information and credentials for LEAs and other authorized EdUcate users.

(4) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other wide-spread online processes.

(5) The Superintendent shall conduct educator licensing transactions electronically.

(6) Approved Utah educator preparation institutions, LEAs, and other CACTUS users shall cooperate with the Superintendent by using the online tools and procedures provided by the Superintendent for transmission of information related to licensing.


(1) The Superintendent shall establish a monitoring program that provides for review of online licensure transactions for:
   (a) accuracy;
   (b) reliability; and
   (c) completeness.

(2) The Superintendent may subject any licensure transaction to monitoring:
   (a) within one year without cause; or
   (b) at any time with cause.

(3) An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

(4)(a) Monitoring conducted under Subsection (2) may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction.

   (b) In order to verify that the assertions made by a license holder were accurate, a license holder may be required to submit:

      (i) transcripts;
      (ii) records of participation in professional development activities;
      (iii) supervisor letters or endorsements; and
      (iv) other documentation requested by the Superintendent.

(5) If the Superintendent finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the Superintendent shall forward the information to UPPAC.

(6) The Superintendent may void a license transaction that was completed on the basis of inaccurate information at any time with notice to the license holder.

R277-312-5. License Applicant and License Holder Responsibilities.

(1) A license applicant or license holder shall supply accurate and complete information in all license transactions.

(2) A license applicant or license holder shall maintain files and documentation of the information provided in a license transaction for a period of one year after the completion of the license transaction.

(3) A license applicant or license holder that intentionally supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by UPPAC and the Board, consistent with Rule R277-215.


(1) The Superintendent shall maintain an automated and self-sustaining licensing process.

(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public, to the extent funds are available.

(3) The Superintendent shall maintain accurate records and documentation of:
   (a) costs of online licensing; and
   (b) the costs of any Superintendent review responsibilities.


(1) The Superintendent shall record documentation of online licensure transactions in EdUcate.

(2)(a) A license applicant shall submit a social security number as part of the license application process.

   (b) A license applicant's social security number shall be classified as private in accordance with Subsection 63G-2-302(2)(d).

(3) A license applicant or license holder shall update personal information in EdUcate in a timely manner.

(4) The Superintendent may use data from EdUcate for research and other valid educational purposes, consistent with Board data release policies.

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:
   (a) licenses issued by the Board;
   (b) endorsements on an educator's license;
   (c) an educator's current assignment;
(d) an educator’s assignment history in Utah public
schools;
(e) an educator's education background; and
(f) Board disciplinary action against an educator's license,
which resulted in:
(i) a reprimand;
(ii) a suspension;
(iii) a revocation; or
(iv) license reinstatement.
(6) The Superintendent shall provide an online licensing
database where the general public may access the information
classified as public in Subsection (5).

KEY: online, licensure
Date of Last Change: 2021
Authorizing, and Implemented, or Interpreted Law: Art X Sec
3; 53E-3-501(1)(a); 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New
Utah Admin. Code Ref (R no.): R277-315 Filing ID
53974

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
Mailing address: PO Box 144200
City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):
Name: Angie Stallings
Phone: 801-538-7830
Email: Angie.stallings@schools.utah.gov

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

General Information
2. Rule or section catchline:
R277-315. Educator Professional Learning Procedures and USBE Credit

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
This new rule will replace repealed Rule R277-519.
(EDITOR’S NOTE: The proposed repeal of Rule R277-
519 is under ID 53978 in this issue, October 1, 2021, of
the Bulletin.)

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 new rule largely follows the requirements of the
repealed rule, with updated regulation for professional
learning credit hours.

Fiscal Information
5. Provide an estimate and written explanation of the
aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have significant fiscal
impact on state government revenues or expenditures. Rule
R277-519 will be repealed and this new rule largely
follows the requirements of Rule R277-519, with updated
regulations for professional learning credit hours. The
updates are largely clarifying and modernizing in nature
and should not result in meaningful impacts to systems or
procedures.

B) Local governments:
This proposed rule is not expected to have significant fiscal
impact on local governments’ revenues or expenditures. Rule
R277-519 will be repealed and this new rule largely
follows the requirements of Rule R277-519, with updated
regulations for professional learning credit hours. The
updates are largely clarifying and modernizing in nature
and should not result in meaningful impacts to systems or
procedures.

C) Small businesses ("small business" means a business employing 1-49 persons):
This proposed rule is not expected to have significant fiscal
impact on small businesses’ revenues or expenditures. Rule
R277-519 will be repealed and this new rule largely
follows the requirements of Rule R277-519, with updated
regulations for professional learning credit hours. The
updates are largely clarifying and modernizing in nature
and should not result in meaningful impacts to systems or
procedures.

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 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 proposed rule is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Rule R277-519 will be repealed and this new rule largely follows the requirements of Rule R277-519, with updated regulations for professional learning credit hours. The updates are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or procedures.

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. Rule R277-519 will be repealed and this new rule largely follows the requirements of Rule R277-519, with updated regulations for professional learning credit hours. The updates are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or procedures.

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 proposed rule is not expected to have direct fiscal impact on small businesses.

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.)

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Fiscal Benefits

| State Government              | $0         | $0     | $0     |
| Local Governments             | $0         | $0     | $0     |
| Small Businesses              | $0         | $0     | $0     |
| Non-Small Businesses          | $0         | $0     | $0     |
| Other Persons                 | $0         | $0     | $0     |
| Total Fiscal Benefits         | $0         | $0     | $0     |

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)(a)
- Subsection 53E-3-401(4)
- Article X, Section 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.)

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 09/15/2021 |
R277-315. Educator Professional Learning Procedures and USBE Credit.

R277-315-1. 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-3-501(1)(a), which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; and
   (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
(2) The purpose of this rule is to establish standards for awarding USBE credit for professional learning.

“Professional learning” has the same meaning as provided in Subsection 53G-11-303(1).

(1) The Superintendent shall approve proposals for USBE professional learning.
(2) A professional learning proposal described in Subsection (1) shall include:
   (a) a description of how the proposal provides fidelity to the professional learning standards as provided in Section 53G-11-303;
   (b) a descriptive outline of the professional learning;
   (c) a schedule of meeting dates and times; and
   (d) professional qualifications of each instructor.
(3) An LEA or other organization approved by the Superintendent shall request approval for USBE professional learning credit through the online professional learning system connected to the online Board certification system.
(4) An LEA or other organization approved by the Superintendent shall make a request under Subsection (3) at least three weeks prior to the beginning of the scheduled professional learning.

R277-315-4. USBE Professional Learning Credit.
The Superintendent shall award USBE credit upon completion of professional learning as follows:
(1) one-half credit for seven to 13 contact hours plus a two hour assigned learning task or reflection;
(2) one credit for 14 to 20 contact hours plus a four hour assigned learning task or reflection.

KEY: teacher certification, professional competency

NOTICE OF PROPOSED RULE

TYPE OF RULE: New
Utah Admin. Code Ref (R no.): R277-321 Filing ID 53975
B) Local governments:

This proposed rule is not expected to have significant fiscal impact on local governments' revenues or expenditures. This new rule replaces Rule R277-526. The differences between the rules are technical in nature and should not impact current practice or procedures.

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

This proposed rule is not expected to have significant fiscal impact on small businesses' revenues or expenditures. This new rule replaces Rule R277-526. The differences between the rules are technical in nature and should not impact current practice or procedures.

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. In addition, this new rule is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

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.)

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<tr>
<td>Total Fiscal Benefits</td>
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<td>Net Fiscal Benefits</td>
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</tbody>
</table>

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-3-401(4) Subsection 53E-3-501(1)(a)
R277-321.  Paraeducator to Teacher Scholarship Program.
R277-321-1.  Authority and Purpose.
   (1)  This rule is authorized by:
   (a)  Utah Constitution Article X, Section 3, which vests
general control and supervision of public education in the Board;
   (b)  Subsection 53E-3-401(4), which permits the Board to
make rules to execute the Board's duties and responsibilities under
the Utah Constitution and state law; and
   (c)  Subsection 53F-5-205(9), which requires the Board to
make rules to administer the Paraeducator to Teacher Scholarship
Program.
   (2)  The purpose of this rule is to:
   (a)  distribute funds to paraeducators seeking to become
licensed educators; and
   (b)  establish application and accountability procedures to
provide funding to prospective educators directly and fairly.
   (1)  "LEA" includes, for purposes of this rule, the Utah
Schools for the Deaf and the Blind.
   (2)  "Paraeducator" means the same as that term is defined
in Subsection 53F-5-205(1)(b).
   (3)  "Paraeducator Scholarship Selection Committee" or
"committee" means the committee established by the Board to select
scholarship recipients as required by Subsection 53F-5-205(5).
   (4)  "Scholarship" means funds paid directly to a Utah
institutions of higher education on behalf of a paraeducator in
accordance with Subsection 53F-5-205(7).
   (1)  A paraeducator shall use a stipend awarded under this
rule solely for expenses allowed by Section 53F-5-205 and this rule
annually between July 1 and the following June 30.
   (2)  A scholarship recipient shall remain continuously
employed by an LEA in accordance with Subsection 53F-5-205(8).
   (3)  A scholarship recipient shall provide documentation of
progress toward graduation, upon request by the scholarship
recipient's employer or the Board.
   (4)  A scholarship recipient who does not remain employed
for the duration of the scholarship period or who does not
satisfactorily complete funded courses shall be responsible to
reimburse the Board for the amount of scholarship funding.
R277-321-4.  Applicant Scholarships Recipient and LEA
Responsibilities.
   (1)  An LEA shall employ a scholarship recipient for a
minimum of 10 hours per week at the time of application for the
scholarship and during any year in which the paraeducator receives
the scholarship.
   (2)  A scholarship applicant shall submit a completed
application found on the Board website to the applicant's LEA.
   (3)  An applicant shall provide university transcripts and
information about tuition expenses on the application based on the
most recent information available from the Utah institution of higher
education to which the applicant has either been admitted or made
application.
   (4)  An LEA shall submit each application to the
Superintendent on or before May 15 annually.
   (5)  A scholarship recipient and the LEA whose employee
receives funding under this program shall cooperate with any
monitoring conducted by the Superintendent.
   (1)  The committee shall consist of:
   (a)  the Superintendent;
   (b)  one representative of the Board of Regents designated
by the Board of Regents;
   (c)  one representative of the largest parent-teacher
association in the state;
   (d)  no more than two additional representatives of the
general public designated by the Board.
   (2)  The committee shall receive completed applications
from LEAs consistent with R277-526-4.
   (3)  The committee shall determine funding for applicants
from applications received from LEAs after considering the number
of applications received and the amount of funding available.
   (4)  The committee may develop and consider additional
selection criteria including:
   (a)  support from the recommending LEA; and
   (b)  geographical distribution of recipients.
   (5)  The committee shall provide names of scholarship
recipients to the Board for review and comment by August 1
annually.
   (6)  The committee or the Board may require a summary
assessment of the increased number of paraeducators who become
educators and other program results from participating scholarship
recipients and LEAs.

KEY: paraeducator scholarship
Date of Last Change: 2021
Authorizing, and Implemented, or Interpreted Law: Art X Sec
3; 53E-3-401(4); 53F-5-205
<table>
<thead>
<tr>
<th>NOTICE OF PROPOSED RULE</th>
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<tr>
<td>TYPE OF RULE: Amendment</td>
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<tr>
<td>Utah Admin. Code Ref (R no.): R277-324</td>
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<td>Filing ID 53976</td>
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</table>

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
Mailing address: PO Box 144200
City, state and zip: Salt Lake City, UT 84114-4200
Contact person(s):
Name: Angie Stallings
Phone: 801-538-7830
Email: Angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

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 requirements for paraeducators servicing students with special needs.

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 change includes updates to definitions, assignments and duties for paraprofessionals, and funding.

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 significant fiscal impact on state government revenues or expenditures. Any modifications to training and supervising of paraeducators to comply with this rule can be accomplished within existing budgets and procedures.

B) Local governments:
This rule change is not expected to have significant fiscal impact on local governments' revenues or expenditures. Any modifications to training and supervising of paraeducators to comply with this rule can be accomplished within existing budgets and procedures.

C) Small businesses (*small business* means a business employing 1-49 persons):
This rule change is not expected to have significant fiscal impact on small businesses' revenues or expenditures. Any modifications to training and supervising of paraeducators to comply with this rule can be accomplished within existing budgets and procedures.

D) Non-small businesses (*non-small business* means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities (*person* means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):
This rule change is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Any modifications to training and supervising of paraeducators to comply with this rule can be accomplished within existing budgets and procedures.

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. Any modifications to training and supervising of paraeducators to comply with this rule can be accomplished within existing budgets and procedures.

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...
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Sydnee Dickson, State Superintendent

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.)

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Fiscal Benefits

| Fiscal Benefits State Government                             | $0     | $0     | $0     |
| Local Governments                                           | $0     | $0     | $0     |
| Small Businesses                                            | $0     | $0     | $0     |
| Non-Small Businesses                                        | $0     | $0     | $0     |
| Other Persons                                               | $0     | $0     | $0     |
| Total Fiscal Benefits                                       | $0     | $0     | $0     |

Net Fiscal Benefits

| Net Fiscal Benefits                                         | $0     | $0     | $0     |

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.

Incorporations by Reference Information

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

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<thead>
<tr>
<th>Official Title of Materials Incorporated (from title page)</th>
<th>Utah Standards for Instructional Paraeducators</th>
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<tr>
<td>Publisher</td>
<td>Board of Education</td>
</tr>
<tr>
<td>Date Issued</td>
<td>December 4, 2018</td>
</tr>
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<td>Issue, or version</td>
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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:

11/01/2021

10. This rule change MAY become effective on:

11/08/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>09/15/2021</td>
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</tbody>
</table>

R277. Education, Administration.
R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.
R277-324-1. Authority and Purpose.

(1) This rule is authorized by:
   (a) Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board;
   (b) Subsection 53E-3-401(4), which gives the Board authority to adopt rules in accordance with its responsibilities;[ and]
   (c) Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and
   (d) Subsection 53F-2-411(4), which requires the Board to establish a rule that creates the funding distribution for money appropriated to paraeducator programs.

(2) The purpose of this rule is to:
   (a) designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals;
(b) establish the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools; and
(c) provide minimum standards for use of funds and reporting requirements.


(1) "Direct supervision of a licensed teacher" means:
(a) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and
(b) the paraprofessional works in close and frequent proximity with the teacher.

(2) "Eligible school," means the same as the term is defined in Subsection 53F-2-411(1)(a).

(3) "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

(4) "Paraeducator" or "paraprofessional" means the same as the term is defined in Subsection 53F-2-411(1)(b).

(5) "Paraeducator training" means professional development consistent with or using information provided in this rule and the Utah Standards for Instructional Paraeducators.


(a) This rule incorporates by reference the Utah Standards for Instructional Paraeducators.

(b) A copy of the Utah Standards for Instructional Paraeducators is available at:

(1) https://www.schools.utah.gov/administrativerules/documentsincorporated; and

(2) the offices of the Utah State Board of Education, 250 E. 500 So., Salt Lake City, Utah, 84111.

R277-324-4. Appropriate Assignments or Duties for Paraeducators.

(1) A paraprofessional may:
(a) upon completion of explicit training from appropriately licensed teachers or related service providers, provide individual or small group instructional assistance or tutoring to students under the direct supervision of an appropriately licensed teacher or related service provider during times when students would not otherwise receive instruction from an appropriately licensed teacher or related service provider;
(b) assist with classroom organization and management, such as organizing instructional or other materials;
(c) provide assistance in computer laboratories with supplementary aids and services, program modifications, and support such as assistive technology devices and services;
(d) conduct parental involvement activities;
(e) provide support in library or media centers; or
(f) act as translators;

(2) A paraprofessional may not:
(a) be responsible for selecting or administering formal diagnostic or psychological instruments or for interpreting the results of those instruments if the paraprofessional's training, licensure, or other forms of certification do not align with the administration and interpretation requirements stated in an instrument's technical manual;
(b) be responsible for selecting programming or prescribing educational activities or materials for the students without the supervision and guidance of an appropriately licensed teacher or related service provider;
(c) be solely responsible for designing lesson plans;
(d) be assigned to implement elements of an IEP for a student with disabilities without direct training, supervision, and involvement from an appropriately licensed teacher or related service provider;
(e) employed to fulfill the responsibilities that may only be provided by an appropriately licensed and otherwise qualified teacher or related service provider; or
(f) perform nursing procedures or administer medications without appropriate supervision and training from an appropriately licensed health care professional.

(3) A licensed teacher shall:
(a) prepare a lesson and plan the instruction support activities to be carried out by a paraprofessional;
(b) evaluate the achievement of the students with whom a paraprofessional works; and
(c) the supervision and support to the paraprofessional that the teacher deems appropriate for the paraprofessional to work effectively in the paraprofessional's role and responsibilities.

(4) If a paraprofessional is working in a special education program, the LEA shall appropriately train the special education teacher to supervise and direct the work of the paraprofessional in the paraprofessional's assigned roles and responsibilities.

(5) An LEA that employs a paraprofessional shall establish and maintain documentation of training provided by the LEA as required in:
(a) Subsection (1)(a); and
(b) for an paraprofessional who works with a student with a disability, Utah State Board of Education Special Education Rules Section IX.E, incorporated by reference into R277-750.

R277-324-4. Requirements for Paraeducators in Title I Schoolwide and Targeted Assistance Programs.

(1) A paraprofessional hired before January 6, 2002 who function under Subsection R277-504-3(1), and work in Title I schoolwide and targeted assistance programs supported by Title I funds shall be a high school graduate or equivalent and shall meet at least one of the following requirements:
(a) complete at least two years, or a [(minimum of 48 semester hours)] at an accredited higher education institution;
(b) obtain an associates, [(or higher)], degree from an accredited higher education institution; or
(c) satisfy a rigorous state assessment, approved by the Board or LEA governing board, that demonstrates:
(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(2) A paraprofessional hired after January 6, 2002 in Title I schoolwide and targeted assistance programs supported by Title I funds shall be a high school graduate or equivalent and shall meet at least one of the following requirements:
(a) earn a secondary school diploma or a recognized equivalent; 
(b) complete at least two years, or a minimum of 48 semester hours, at an accredited higher education institution; 
(c) obtain an associates, bachelors, or higher degree from an accredited higher education institution; or 
(d) has satisfied a rigorous state or local assessment about the individual’s knowledge of an ability to assist students in core courses under state or federal law. 

(3) The individual shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and Rule R277-516.

R277-324-[56] Exceptions to Title I Schoolwide and Targeted Assistance Programs.

The provisions of this rule [requirements in Section R277-324-4 do not apply to a paraprofessional with a high school diploma or equivalent solely providing:

(1) a paraprofessional who is proficient in English and a language other than English who provides support through translator services;
(2) a paraprofessional who is proficient in English and a language other than English who provides support as a parent engagement liaison; or
(3) personal care for students with disabilities.

R277-324-[67] Use of Funds.

An LEA may use Title I funds in addition to other funds available and identified by the LEA to support ongoing training and professional development for paraprofessionals.


(1) The Superintendent shall divide the funds provided under Section 53F-2-411 equally to [eligible] schools identified as comprehensive support and improvement schools.

(2) A school may only use funds distributed in accordance with Subsection (1) to hire high quality paraeducators to assist with reading instruction.

R277-324-[89] Responsibilities of Eligible Schools Receiving Paraeducator Funding.

(1) A paraeducator hired with paraeducator funding shall:
(a) meet the qualifications described in Section R277-324-[45]; and
(b) provide additional aid in the classroom to assist students in achieving academic success.

(2) Schools accepting these funds shall provide an annual report as directed by the Superintendent that includes the following:
(a) the number of paraeducators hired with program money;
(b) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and
(c) accountability measures, including student test scores and other student assessment elements for students served by the program.

KEY: paraprofessional qualifications
Date of Last Change: 2021 January 22, 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(a)(i); 53F-2-411(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal
Utah Admin. Code Ref (R no.): R277-512 Filing ID 53977

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
Mailing address: PO Box 144200
City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):
Name: Angie Stallings Phone: 801-538-7830 Email: Angie.stallings@schools.utah.gov

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

General Information
2. Rule or section catchline: R277-512. Online Licensure

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): This filing will repeal Rule R277-512, which is to be replaced by Rule R277-312. (EDITOR'S NOTE: The proposed new Rule R277-312 is under ID 53973 in this issue, October 1, 2021, of the Bulletin.)

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 is being repealed in its entirety and replaced with Rule R277-312 to conform with changes to the licensing process and licensing rule number scheme.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This proposed repeal is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is being replaced by Rule R277-312.
Notices of Proposed Rules

Sydnee Dickson, State Superintendent

This proposed repeal is not expected to have independent fiscal impact on local governments’ revenues or expenditures. This rule is being replaced by Rule R277-312.

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

This proposed repeal is not expected to have independent fiscal impact on small businesses’ revenues or expenditures. This rule is being replaced by Rule R277-312.

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 repeal 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.

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

This proposed repeal is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule is being replaced by Rule R277-312.

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. This rule is being replaced by Rule R277-312.

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 proposed repeal is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

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.)

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<td>Total Fiscal Benefits</td>
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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-3-401(4) Subsection 53E-3-501(1)(a) Article X, Section 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
A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
<th>Date: 09/15/2021</th>
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### R277. Education, Administration.

#### R277-512. Online Licensure.

**R277-512-1. 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-3-501(1)(a), which directs the Board to make rules regarding the certification of educators; and
   - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

2. The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained for online license transaction processes.


1. (a) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on licenses and license applications, which may include:
   - (a) personal directory information;
   - (b) educational background;
   - (c) endorsements;
   - (d) employment history;
   - (e) professional development information; and
   - (f) a record of disciplinary action taken by the Board against the educator.

   (b) Information contained in an individual's CACTUS file may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.

2. "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and Blind.

3. "License," for purposes of this rule, means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Subsection 53E-6-102(10).

4. "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent on the CACTUS database.

5. "License transaction" means the interactions between a license holder or applicant and the Superintendent that result in issuance of:
   - (a) a license;
   - (b) a renewal of a license; or
   - (c) a modification of a license or license record.

6. "Online license transaction" means those license transactions that take place via the process maintained by a contracted provider, chosen by the Superintendent.

7. "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.


1. All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

2. (a) Educators may receive an electronic or paper verification of a licensure transaction.

3. (b) A verification provided under Subsection (2)(a) is not an educator license.

4. (c) CACTUS shall be the final repository of educator information and credentials for LEAs and other authorized CACTUS users.

5. (d) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility, consistent with those generally found in other widespread online processes.

6. The Superintendent shall conduct educator licensing transactions electronically.

7. Approved Utah educator preparation institutions, LEAs, and other CACTUS users shall cooperate with the Superintendent by using the online tools and procedures provided by the Superintendent for transmission of information related to licensing.


1. The Superintendent shall establish an auditing program that provides for review of online licensure transactions for:
   - (a) accuracy;
   - (b) reliability; and
   - (c) completeness.

2. (a) The Superintendent may subject any license transaction to audit:
   - (a) within one year without cause; or
   - (b) at any time with cause.

(b) An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

(c) An audit may include a review of license documentation to verify the statements made by the license holder as part of the online license transaction.

(d) In order to verify that the assertions made by a license holder were accurate, a license holder may be required to submit:
   - (1) transcripts;
   - (2) records of participation in professional development activities;
UTAH STATE BULLETIN

[50x60]NOTICES OF PROPOSED RULES

R277-512-5. License Applicant and License Holder Responsibilities.
(1) A license applicant or license holder shall supply accurate and complete information in all license transactions.
(2) A license applicant or license holder shall maintain files and documentation of the information provided in a license transaction for a period of one year after the completion of the license transaction.
(3) A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by UPPAC and the Board.

(1) The licensing process shall be automated and self-sustaining.
(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public.
(3) The Superintendent shall determine and assess licensing fees to license applicants that cover the actual and complete costs of licensing.
(4) The Board's Licensing Section shall maintain accurate records and documentation of:
(a) fees assessed;
(b) costs of online licensing; and
(c) any Superintendent review responsibilities.

(1) The Superintendent shall record documentation of online licensure transactions in CACTUS.
(2)(a) License applicants shall be required to submit a social security number in order to be licensed.
(b) A license applicant's social security number shall be classified as private in accordance with Subsection 63G-2-302(2)(d).
(3) A license applicant or license holder shall update personal CACTUS information in a timely manner.
(4) CACTUS records may be used by the Superintendent for research and other valid educational purposes.
(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:
(a) licenses issued by the Board;
(b) endorsements on an educator's license;
(c) an educator's current assignment;
(d) an educator's assignment history in Utah public schools;
(e) an educator's education background; and
(f) Board disciplinary action against an educator's license, which resulted in:

(i) letter of reprimand;
(ii) suspension;
(iii) revocation; or
(iv) reinstatement.
(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure

Date of Last Change: January 10, 2017
Notice of Continuation: November 15, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a); 53E-3-401(4)

NOTICE OF PROPOSED RULE

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Agency Information
1. Department: Education
2. Agency: Administration
3. Building: Board of Education
4. Street address: 250 E 500 S Salt Lake City, UT 84111
5. City, state and zip: PO Box 144200 Salt Lake City, UT 84114-4200

Contact person(s):
Name: Angie Stallings
Phone: 801-538-7830
Email: Angie.stallings@schools.utah.gov

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

General Information
2. Rule or section catchline:
R277-519. Educator Professional Learning Procedures and USBE Credit

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
This filing will repeal Rule R277-519, which is to be replaced by Rule R277-315. (EDITOR'S NOTE: The proposed new Rule R277-315 is under ID 53974 in this issue, October 1, 2021, of the Bulletin.)

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):

UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19 53
This rule is being repealed in its entirety and replaced by Rule R277-315 which will establish procedures for professional learning courses and credit and to conform with updated licensing numbering scheme.

**Fiscal Information**

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

A) **State budget:**

This proposed repeal is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is being replaced by Rule R277-315.

B) **Local governments:**

This proposed repeal is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule is being replaced by Rule R277-315.

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

This proposed repeal is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule is being replaced by Rule R277-315.

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 repeal 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 proposed repeal is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule is being replaced by Rule R277-315.

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. This rule is being replaced by Rule R277-315.

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

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.)

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

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**UTAH STATE BULLETIN,** October 01, 2021, Vol. 2021, No. 19
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

### Citation Information

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<th>Subsection</th>
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<td>53E-3-401(4)</td>
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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: 09/15/2021 |

R277. Education, Administration.

[Rule R277-519. Educator Professional Learning Procedures and USBE Credit.]

**R277-519-1. 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-3-501(1)(a), which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; and

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

(2) The purpose of this rule is to establish definitions and standards for awarding USBE credit for professional learning.

**R277-519-2. Definitions.**

“Professional learning” has the same meaning as provided in Subsection 53G-11-303(1).
Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R277-526. Paraprofessional to Teacher Scholarship Program

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
This filing will repeal Rule R277-526 which is to be replaced by Rule R277-321. (EDITOR'S NOTE: The proposed new Rule R277-321 is under ID 53975 in this issue, October 1, 2021, of the Bulletin.)

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 is being repealed in its entirety and replaced with Rule R277-321 which includes technical changes and clarifications for membership of the Paraprofessional Scholarship Selection Committee, and conforms with updated licensing rule numbering scheme.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This proposed repeal is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is being replaced by Rule R277-321.

B) Local governments:
This proposed repeal is not expected to have independent fiscal impact on local governments’ revenues or expenditures. This rule is being replaced by Rule R277-321.

C) Small businesses ("small business" means a business employing 1-49 persons):
This proposed repeal is not expected to have independent fiscal impact on small businesses’ revenues or expenditures. This rule is being replaced by Rule R277-321.

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 repeal 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 proposed repeal is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule is being replaced by Rule R277-321.

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. This rule is being replaced by Rule R277-321.

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 proposed repeal is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

6. 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.)

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NOTICES OF PROPOSED RULES

R277.  Education, Administration.
R277-526.  Paraeducator to Teacher Scholarship Program.
R277-526 1.  Authority and Purpose.
(1)  This rule is authorized by:
(a)  Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
(b)  Subsection 53E-3-401(4), which permits the Board to make rules to execute the Board’s duties and responsibilities under the Utah Constitution and state law; and
(c)  Subsection 53F-5-205(9), which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.
(2)  The purpose of this rule is to:
(a)  distribute funds to paraeducators seeking to become licensed educators; and
(b)  establish application and accountability procedures to provide funding to prospective educators directly and fairly.

(1)  “LEA” includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
(2)  “Paraeducator” means the same as that term is defined in Subsection 53F-5-205(1)(b).
(3)  “Paraeducator Scholarship Selection Committee” or “committee” means the committee established by the Board to select scholarship recipients as required by Subsection 53F-5-205(5).
(4)  “Scholarship” means funds paid directly to a Utah institution of higher education on behalf of a paraeducator in accordance with Section 53F-5-205.

(1)  A paraeducator shall use a stipend awarded under this rule solely for expenses approved by Section 53F-5-205 and this rule annually between July 1 and the following June 30.
(2)  A scholarship recipient shall remain continuously employed by an LEA in accordance with Subsection 53E-3-401(4), which permits the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.
(3)  A scholarship recipient shall provide documentation of progress toward graduation, as requested by the scholarship recipient’s employer or the Board.
(4)  A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses shall be responsible to reimburse the Board for the amount of scholarship funding.

(1)  An LEA shall employ a scholarship recipient for a minimum of 10 hours per week at the time of application for the scholarship and during any year in which the paraeducator receives the scholarship.
(2)  A scholarship applicant shall submit a completed application found on the Board website to the applicant’s LEA.
(3)  An applicant shall provide university transcripts and information about tuition expenses on the application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.
(4)  An LEA shall submit all applications to the Superintendent on or before May 15 annually.
(5)  A scholarship recipient and the LEA whose employee receives funding under this program shall cooperate on any assessment required by the Board.

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</table>

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-3-401(4)  Subsection 53F-5-205(9)

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021
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
Agency head or designee, and title: Angie Stallings, Deputy Superintendent of Policy  Date: 09/15/2021
R277-526-5.  State Board of Education—Staff/Committee Responsibilities.

(1)  The committee shall consist of:

(a)  one representative of the Board designated by the Board;

(b)  one representative of the Board of Regents designated by the Board of Regents;

(c)  one representative of the largest parent/teacher association in the state;

(d)  no more than two additional representatives of the general public designated by the Board.

(2)  The committee shall receive completed applications from LEAs consistent with R277-526-4.

(3)  The committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.

(4)  The committee may develop and consider additional selection criteria including:

(a)  support from the recommending LEA; and

(b)  geographical distribution of recipients.

(5)  The committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

(6)  The committee or the Board may require a summary assessment of the increased number of paraeducators who become paraeducators and other program results from participating scholarship assessment of the increased number of paraeducators who become paraeducators and other program results from participating scholarship

KEY:  paraeducators, scholarships

Date of Last Change:  February 7, 2017
Notice of Continuation:  December 14, 2016
Authorizing and Implemented or Interpreted Law:  Art X Sec 3; 53E-3-401(4); 53E-5-205(9)]

NOTICE OF PROPOSED RULE

TYPE OF RULE:  New
Utah Admin. Code Ref (R no.):  R277-556  Filing ID 53980

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
Mailing address:  PO Box 144200
City, state and zip:  Salt Lake City, UT 84114-4200
Contact person(s):
Name:  Angie Stallings  Phone:  801-538-7830  Email:  Angie.stallings@schools.utah.gov

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

General Information

2.  Rule or section catchline:
R277-556.  Charter School Closure Reserve Account

3.  Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
This new rule is being enacted based on H.B. 425 of the 2021 General Session, Education Monitoring and Funds Management.

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 implements legislative requirements for the establishment of a Charter School Closure Reserve Account, with annual contributions from charter schools consistent with the statute’s requirements.

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. This new rule is due to H.B. 425 (2021).

B)  Local governments:
This rule change is not expected to have independent fiscal impact on local governments’ revenues or expenditures. This new rule is due to H.B. 425 (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. This new rule is due to H.B. 425 (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. This new rule is due to H.B. 425 (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. This new rule is due to H.B. 425 (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

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
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Small Businesses | $0 | $0 | $0 |
Non-Small Businesses | $0 | $0 | $0 |
Other Persons | $0 | $0 | $0 |
Total Fiscal Benefits | $0 | $0 | $0 |

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:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Section</th>
<th>Article</th>
<th>Head</th>
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<tr>
<td>53E-3-401(4)</td>
<td>53F-9-307</td>
<td>X, Section 3</td>
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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy |
| Date: | 09/15/2021 |

R277. Education, Administration.
R277-556-1. 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;
(1) "Account" means the Charter School Closure Reserve Account established in Section 53F-9-307.
(2) "Per pupil contribution" means the annual contribution required of each charter school in the state in accordance with Section 53F-9-307.
(3) "Account" means the Charter School Closure Reserve Account.

(1) The Superintendent shall calculate a charter school's annual per pupil contribution based on the school's most recent October 1 count in accordance with Subsections 53F-9-307(5)(b) and 53F-9-307(5)(c) and notify each charter school by December 1 annually.
(2) The sum of per pupil contributions for all charter schools in the state may not cause the balance of the account to exceed the amounts established in Subsection 53F-9-307(6).
(3) The Superintendent shall withhold the per pupil contribution from a charter school's mid-year budgetary allotment update.
(4) The Superintendent shall transfer funds withheld in accordance with Subsection (3) to the account.
(5) The Superintendent may only use funds in the account consistent with the limitations established in Subsections 53F-9-307(7) through 53F-9-307(9).

KEY: Charter School Closure Fund
Date of Last Change: 2021
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE

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<th>TYPE OF RULE:</th>
<th>Amendment</th>
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<tr>
<td>Utah Admin. Code Ref (R no.):</td>
<td>R277-712 Filing ID 53981</td>
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Agency Information

1. Department: Education
2. Agency: Administration
3. Building: Board of Education
4. Street address: 250 E 500 S
5. City, state and zip: Salt Lake City, UT 84111
6. Mailing address: PO Box 144200
7. City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Angie Stallings</td>
<td>801-538-7830</td>
<td><a href="mailto:Angie.stallings@schools.utah.gov">Angie.stallings@schools.utah.gov</a></td>
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</table>

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

General Information

2. Rule or section catchline:
R277-712. Competency-based Grant Programs

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
These amendments are based on the passage of H.B. 181 of the 2021 General Session, Personalized Competency-based Learning.

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 reflects updated language passed as part of H.B. 181 (2021) and includes updated definitions and technical changes.

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. This rule change is due to H.B. 181 (2021).

B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule change is due to H.B. 181 (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. This rule change is due to H.B. 181 (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. This rule change is due to H.B. 181 (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. This rule change is due to H.B. 181 (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

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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:

Section 53F-5-502 Subsection 53E-3-401(4) Article X, Section 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.)

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: 09/15/2021 |
grant application reviewers to assist the [advisory] review committee with the work described in Subsection (3).  
(3) The [advisory] review committee shall:
   (a) establish metrics to analyze the quality of a grant application;
   (b) review an LEA's grant application to determine whether the grant application:
      (i) meets the criteria described in applicable statute and rule; and
      (ii) should be selected by the Board to receive a grant;
   (c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and
   (d) perform other duties as directed by:
      (i) the Board; or
      (ii) the Superintendent.

R277-712-4. Pre-grant Approval Requirements.  
(1) Before an LEA submits a grant application to the [advisory] review committee for approval by the Board, the LEA shall have at least two LEA representatives participate in the personalized, competency-based learning grant application technical assistance training conducted by the Superintendent, including:
   (a) the school district superintendent or charter school executive director; and
   (b)(i) the LEA's curriculum director; or
   (ii) the LEA's proposed personalized, competency-based learning program manager.
(2) A member of an LEA's local school board or charter school governing board and other staff identified by the applying LEA may also participate in the technical assistance training described in Subsection (1).  

R277-712-5. Grant Application.  
(1) An LEA may apply for a grant by submitting an application to the Superintendent.
(2) The Superintendent shall:
   (a) develop a grant application for each phase of the grant program;
   (b) set a deadline for the application to be submitted to the Superintendent; and
   (c) make the grant application available to LEAs on the Board's website.

R277-712-6. Procedure and Requirements for Awarding a Grant.
(1) The [advisory] review committee and the Superintendent shall make recommendations to the Board based on:
   (a)(i) the criteria described in Subsection 53F-5-503(2) for a planning grant;  
   (ii) the criteria described in Subsection 53F-5-504(2) for an implementation grant; or
   (iii) the criteria described in Subsection 53F-5-505(2) for an expansion grant;  
   (b) the LEA's proposed budget for the LEA's personalized, competency-based learning program; and
   (c) the LEA's outcome-based measurements described in Subsection (2).
(2) An LEA shall include outcome-based measurements as part of the LEA's personalized, competency-based learning program to measure the performance of the LEA's plan.
(b) The outcome-based measurements described in Subsection (2)(a) shall include at least one measurement of student growth and proficiency.

(c) The outcome-based measurements described in Subsection (2)(a) may include:

(i) parent and student satisfaction with the LEA's personalized, competency-based learning program;

(ii) cost savings;

(iii) an increase in the LEA's graduation rate;

(iv) number of credits earned by students through the personalized, competency-based learning program; and

(v) other quality program indicators as listed in Utah's Personalized Competency-Based Education Framework.

(3) An LEA may be awarded each subsequent phase of the grant program only after:

(a) successful participation in the previous phase; and

(b) Board approval of the LEA's plan.

(4) If an LEA's grant application is denied by the Board:

(a) an LEA may submit a new grant application the next year following the first denial;

(b) an LEA may only submit a planning grant application the next year following a second denial and the LEA shall:

(i) request technical assistance from the Superintendent prior to re-applying; and

(ii) demonstrate increased understanding of personalized, competency-based learning implementation upon re-application.

KEY: personalized, competency-based learning program

Date of Last Change: 2021

Notice of Continuation: April 21, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; Title 53F, Chapter 5, Part 5; 53E-3-401(4)

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NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

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<tr>
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<td>53982</td>
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### Agency Information

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

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**General Information**

**2. Rule or section catchline:**

R277-720. Reimbursement Program for Early Graduation from Competency-Based Education

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

(Why is the agency submitting this filing?):

These amendments are based on the passage of H.B. 181 of the 2021 General Session, Personalized Competency-Based Learning.

**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 reflects updated language passed as part of H.B. 181 (2021) and includes updated definitions, technical changes and updates to local education agency (LEA) requirements.

---

**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. This rule change is due to H.B. 181 (2021).

**B) Local governments:**

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule change is due to H.B. 181 (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. This rule change is due to H.B. 181 (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-

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**Please address questions regarding information on this notice to the agency.**
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. This rule change is due to H.B. 181 (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. This rule change is due to H.B. 181 (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

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.)

<table>
<thead>
<tr>
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<th>FY2023</th>
<th>FY2024</th>
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| State Government        | $0         | $0     | $0     |
| Local Governments       | $0         | $0     | $0     |
| Small Businesses        | $0         | $0     | $0     |
| Non-Small Businesses    | $0         | $0     | $0     |
| Other Persons           | $0         | $0     | $0     |
| Total Fiscal Benefits   | $0         | $0     | $0     |

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:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Article X, Section 3</th>
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<td>53E-3-401(4)</td>
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<td>53F-2-511(6)</td>
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<td>53F-2-511(1)(c)(ii)</td>
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</tbody>
</table>

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>09/15/2021</td>
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</table>
R277-720. Reimbursement Program for Early Graduation from Personalized, Competency-Based [Education] Learning Program.

R277-720-1. Authority and Purpose.
(1) This rule is authorized by:
   (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
   (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
   (c) Subsection 53F-2-511(1)(c)(ii), which allows the Board to make rules to specify additional criteria for an LEA to be eligible for a personalized, competency-based [education] learning early graduation reimbursement; and
   (d) Subsection 53F-2-511(6), which allows the Board to make rules for the administration of the Reimbursement Program for Early Graduation from Personalized, Competency-Based [Education] Learning.

(1) "Advisory Committee" means the Competency-based Advisory Committee created in Section R277-712-3.
(2) "Eligible LEA" means an LEA that:
   (a) has demonstrated to the Board that the LEA or [a school district] a school within the LEA[.] provides and facilitates personalized competency-based [education] learning that is based on the core principles described in Section 53F-5-502; and
   (b) has an approved personalized competency-based [education] learning program that includes:
      (i) at least one outcome measure for each indicator level required by the Superintendent;
      (ii) outcome measures that are disaggregated by student subgroups where possible; and
      (iii) at least one outcome measure for student growth and proficiency.
(3) "Eligible student" means a student who:
   (a) meets the requirements described in Subsection 53F-2-511(1)(d);
   (b) has been flagged by an LEA as a personalized competency-based [education] learning participant.
(4) "Program" means the Reimbursement Program for Early Graduation from Personalized, Competency-Based [Education] Learning described in Section 53F-2-511.
(5) "Review Committee" means the Personalized Competency-based Learning Review Committee created in Section R277-712-3.

(1) To receive a personalized competency-based [education] learning designation, an eligible LEA shall:
   (a) submit an application in the form prescribed by the Superintendent to the [advisory] review committee;
   (b) submit the application in Subsection (1)(a) no later than April 1[a] of the school year prior to the school year in which the LEA intends to seek reimbursement; and
   (c) have an approved personalized competency-based [education] learning plan pursuant to Rule R277-712.
(2) The [advisory] review committee shall review [all] each application[s] and make recommendations to the Board based on the Board approved personalized competency-based [education] learning core principals and measures described in Rule R277-712.

(1) [An eligible LEA with a competency-based education designation may seek reimbursement for an eligible student beginning October 2021 for membership generated in the 2020-2021 school year.] An eligible LEA with a personalized, competency-based learning designation may seek reimbursement for an eligible student in October for membership generated by the eligible student in the previous school year.
   (a) The reimbursement amount shall be calculated by the Superintendent in the following manner:
      (i) at least one outcome measure for each indicator level required by the Superintendent;
      (ii) outcome measures that are disaggregated by student subgroups where possible; and
      (iii) at least one outcome measure for student growth and proficiency.
   (b) [An eligible LEA with a competency-based education designation may seek reimbursement for an eligible student beginning October 2021 for membership generated in the 2020-2021 school year.] An eligible LEA with a personalized, competency-based learning designation may seek reimbursement for an eligible student in October for membership generated by the eligible student in the previous school year.
   (2) The reimbursement amount shall be calculated by the Superintendent in the following manner:
      (a) the total amount of lost weighted pupil unit for each eligible student shall be determined as described by Subsection 53F-2-511(5);
      (b) the total amount of lost weighted pupil unit for each eligible student shall be used to establish an LEA aggregate total and a statewide aggregate total for all eligible students;
      (c) if the statewide aggregate total is equal to or less than the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed the LEA aggregate total;
      (d) if the statewide aggregate total exceeds the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed a prorated amount proportional to the percentage that the LEA aggregate total is of the statewide aggregate total.
   (3) An LEA shall not receive a reimbursement for an eligible student that exceeds the amount outlined in Subsection 53F-2-511(5)(a).

KEY: personalized competency-based [education] learning, reimbursements, early graduation

Date of Last Change: 2021[May 23, 2019]

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-511(1)(c)(ii); 53F-2-511(6)
### General Information

**2. Rule or section catchline:**

R277-753. LEA Reporting Requirements for Section 504 Students

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

This rule is being repealed due to the passage of H.B. 42 in the 2021 General Session, Education Agency Reporting Requirements.

**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):

H.B. 42 (2021) repealed the requirement for local education agencies (LEAs) to report certain information related to Section 504 accommodations. Because the requirement was repealed, Rule R277-753 is no longer needed.

### 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. This rule is being repealed due to H.B. 42 (2021).

#### B) Local governments:

This rule change may save school districts and charter schools time since it is eliminating a reporting requirement. This rule is being repealed due to H.B. 42 (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. This rule is being repealed due to H.B. 42 (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 repeal 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. This rule is being repealed due to H.B. 42 (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. This rule is being repealed due to H.B. 42 (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

### 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.)
NOTICES OF PROPOSED RULES

R277. Education, Administration.
R277-753. LEA Reporting Requirements for Section 504 Students.

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-2-512(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.
   (2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

2. Definitions.
   (1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.
   (2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student’s access to the student’s education.
   (3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activity, which may require assistive technology but does not require specialized instruction under special education services.
   (4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.
   (5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student’s access to the student’s education:
       (a) immune system function;
       (b) normal cell growth;
       (c) genitourinary function;
       (d) bladder function;
       (e) brain function;

Regulatory Impact Table

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Fiscal Benefits

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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-3-401(4) Article X, Section 3 Subsection 53F-3-512(2)(a)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 11/01/2021

Agency Authorization Information

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 09/15/2021 |

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.

10. This rule change MAY become effective on: 11/08/2021

R277. Education, Administration.
R277-753. LEA Reporting Requirements for Section 504 Students.

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-2-512(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.
   (2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

2. Definitions.
   (1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.
   (2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student’s access to the student’s education.
   (3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activity, which may require assistive technology but does not require specialized instruction under special education services.
   (4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.
   (5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student’s access to the student’s education:
       (a) immune system function;
       (b) normal cell growth;
       (c) genitourinary function;
       (d) bladder function;
       (e) brain function;
(f) circulatory function;
(g) endocrine function;
(h) lymphatic function;
(i) special sensory organ and skin function;
(j) digestive function;
(k) bowel function;
(l) neurological function;
(m) respiratory function;
(n) cardiovascular function;
(o) hemic function;
(p) musculoskeletal function; and
(q) reproductive function.

(6) "Medical impairment" means a disability that is chronic or acute in nature, which may be active or in remission, and which substantially limits one or more major life activities, including, but not limited to:
(a) allergies;
(b) asthma;
(c) attention deficit disorder or attention deficit hyperactivity disorder;
(d) chemical sensitivities;
(e) diabetes;
(f) epilepsy;
(g) a heart condition;
(h) hemophilia;
(i) lead poisoning;
(j) leukemia;
(k) cancer;
(l) arthritis;
(m) nephritis;
(n) rheumatic fever;
(o) sickle cell anemia;
(p) Tourette syndrome;
(q) HIV/AIDS; or
(r) an acquired brain injury adversely affecting a student’s access to the student’s education, which may result from health problems such as:
(i) an hypoxic event;
(ii) encephalitis;
(iii) meningitis;
(iv) brain tumor; or
(v) stroke.

(7) "Mental health impairment" means a mental disability that is chronic or acute in nature, which substantially limits one or more major life activities, including, but not limited to:
(a) anxiety;
(b) attention deficit disorder or attention deficit hyperactivity disorder;
(c) depression;
(d) post traumatic stress disorder; or
(e) emotional or mental illnesses.

(8) "Orthopedic impairment" means a physical disability, which may be on-going or short-term in nature, that substantially limits one or more major life activities, and which adversely affects a student’s access to the student’s education.

(9) "Other impairment" means any other disability not specifically defined in this rule, which substantially limits one or more major life activities.


(11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board.

(12) "Utah Program Improvement Planning System" or "UPIPS" is a secure website utilized by the Board Special Education Services section to collect compliance and fiscal LEA data regarding students with disabilities, required under state and federal law.

R277-753-3 - LEA Section 504 Reporting Requirements.

(1) An LEA shall include a count of students with Section 504 accommodations in its daily UTREx submission.

(2) An LEA shall report financial costs incurred as a result of Section 504 accommodations to the Superintendent through UIPS by June 30 annually.

(3) An LEA’s data submissions under this rule shall be broken down in the following categories:
(a) Autism;
(b) Brain Injury or Concussion Impairment;
(c) Hearing Impairment;
(d) Learning Impairment;
(e) Major Bodily Function Impairment;
(f) Medical Impairment;
(g) Mental Health Impairment;
(h) Orthopedic Impairment; and
(i) Other Impairment.

KEY: reporting, requirements, Section 504

Date of Last Change: August 7, 2017

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.): R277-914  Filing ID 53984

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

Mailing address: PO Box 144200

City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):

Name: Angie Stallings
Phone: 801-538-7830
Email: Angie.stallings@schools.utah.gov

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

2. Rule or section catchline:
R277-914. Career and Technical Student Organizations

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to update the rule with current practices and terminology being used in the career and technical education (CTE) 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):
The amendments include updating relevant definitions, updating CTE course grouping names, and clarifying the purposes for the two funding streams that are used for the CTE student organizations.

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 significant fiscal impact on state government revenues or expenditures. The amendments are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

B) Local governments:
This rule change is not expected to have significant fiscal impact on local governments' revenues or expenditures. The amendments are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have significant fiscal impact on small businesses' revenues or expenditures. The amendments are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have significant fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

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 are largely clarifying and modernizing in nature and should not result in meaningful impacts to systems or processes.

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

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.)

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R277. Education, Administration.
R277-914. Career and Technical Student Organizations.

R277-914-1. 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-3-507(1), which directs the Board to establish minimum standards for career and technical programs in the public education system;
   (c) Subsection 53E-3-507(3), which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education; and
   (d) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
(2) The purpose of this rule is to:
   (a) make Career and technical student organizations programmatically and fiscally accountable to the Board; and
   (b) provide procedures and supervision toward that end.

(1) "Career and technical education" or "CTE" means organized educational programs or courses in a secondary school that:
   (a) teach current industry-specific skills and knowledge;
   (b) prepare a student for employment; and
   (c) can prepare a student for postsecondary employment where entry requirements do not require a baccalaureate or advanced degree.

(2) "CTE [areas] programs of study" means programs organized into clusters that include:
   (a) agriculture, food, and natural resources;
   (b) architecture and construction;
   (c) arts, audio or vision technology, and communications;
   (d) business, finance, and marketing;
   (e) computer science and information technology;
   (f) education and training;
   (g) engineering and technology;
   (h) health science;
   (i) hospitality and tourism;
   (j) human services;
   (k) law, public safety, corrections, and security;
   (l) manufacturing; and
   (m) transportation, distribution, and logistics.

   (a) agriculture;
   (b) business;
   (c) family and consumer sciences;
   (d) health science;
   (e) information technology;
   (f) marketing;
   (g) skilled and technical sciences; and
   (h) technology and engineering education.

(3) "Career and technical student organization" or "CTSO" means a designated student leadership organization that:

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### Fiscal Benefits

<table>
<thead>
<tr>
<th>State Government</th>
<th>$0</th>
<th>$0</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Governments</td>
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</tr>
<tr>
<td>Small Businesses</td>
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<tr>
<td>Non-Small Businesses</td>
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<tr>
<td>Other Persons</td>
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<tr>
<td><strong>Total Fiscal Benefits</strong></td>
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<tr>
<td><strong>Net Fiscal Benefits</strong></td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

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**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.

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**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:

<table>
<thead>
<tr>
<th>Subsection 53E-3-507(1)</th>
<th>Article X, Section 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subsection 53E-3-507(3)</td>
<td>53E-3-401(4)</td>
</tr>
</tbody>
</table>

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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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.

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**Agency Authorization Information**

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: 09/15/2021 |
(a) [places emphasis on leadership and skill development] provides opportunities for students to learn and practice:

(i) leadership development;
(ii) academic and technical skills; and
(iii) community involvement; and

(b) are intra-curricular organizations which are[is] integral to the career and technical programs at the secondary and postsecondary levels of instruction; and

(c) has[ve] local, state and national affiliation.

(4)(a) "CTSO state advisor" means a professional in identified program areas designated by the Superintendent to direct a career and technical student leadership organization statewide.

(4)(b) A CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the Superintendent to administer and advise in a specific program area.

(5) "Funds designated for management of student organizations at the state level" means up to one percent (1%) of the CTE add-on fund allowed to be used for the management and operation of CTSOs at the state and local level as described in Subsection 53F-2-311(2)(b).


(1) Each student organization designated by the Superintendent shall establish a statewide organization advisory board of not less than [three]five members, one of which must be the Superintendent or designee.

(2) Each [program area] CTSO shall develop and follow organization by-laws, which shall be available on the CTSO's website.

(3) Each CTSO advisory board shall have advisory fiscal oversight for the organization.

(4) Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

(5) Each CTSO shall comply with the policies and procedures established by the Superintendent.

R277-914-4. Fiscal Oversight of Student Organizations.

(1) A CTSO advisory board shall act consistent with fiscal procedures provided by the Superintendent.

(2) A CTSO advisory board shall submit [all] the required financial records and reports for monitoring auditing on a schedule established by the Superintendent.

(3) [If requested by the Superintendent or the Board, a] A CTSO’s financial records shall be submitted for review auditing whenever there is a change in the CTSO state advisor.

(4)(a) The Superintendent shall designate a school district or institution to act as the fiscal agent for a CTSO’s fiscal account.

(4)(b) The Superintendent shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal account.

(5) The funds designated for management of student organizations at the state level shall be dispersed by the Superintendent designated state fiscal agent for CTSOs through the grants management system separate accounts for salaries, operating expenses and national conference travel.

(5) Additional funds allocated by the legislature as CTE student organization funds shall be used for:

(a) oversight and management of state CTSO programs, including:

(i) national conference travel;
(ii) salaries; and
(iii) state level advisors, operations, and management; and

(b) if funds are available, CTSO grants to an LEA.

KEY: secondary education, career and technical education

Date of Last Change: [November 7, 2016]

Notice of Continuation: September 15, 2016

Authorizing, and Implemented or Interpreted Law: 53E-3-507(1); 53E-3-507(3); 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Ref (R no.): R307-401

Filing ID: 53893

Agency Information

1. Department: Environmental Quality

Agency: Air Quality

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 144820

City, state and zip: Salt Lake City, UT 84114-4820

Contact person(s):

Name: Mat Carlile

Phone: 385-306-3565

Email: mcarlile@utah.gov

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

General Information

2. Rule or section catchline:

R307-401. Permit: New and Modified Sources

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

The Division of Air Quality (DAQ) is amending this rule to replace newspaper notice of permitting actions with an electronic notice under Section 45-1-101. The rule amendments also add a requirement to publish permit notices and related documentation on DAQ’s website, therefore users will no longer have to contact DAQ to obtain hard copies. The changes allow DAQ to reach more people, increase transparency, and provide greater public access to information. DAQ estimates that the state will save approximately $11,475 per year.

Other stylistic and grammatical changes are made to this rule to comply with the Rulewriting Manual for Utah.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the
Fiscal Information

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

A) State budget:
There are no additional costs expected for the state budget as no new monetary requirements are being implemented. DAQ does expect to save approximately $11,475 annually by switching to electronic notices.

B) Local governments:
There are no anticipated costs or savings to local governments because this rulemaking does not apply to them.

C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses that publish legal ads will see a decrease in revenue of approximately $3,125 per year because of this rulemaking. DAQ identified 18 small businesses that have published legal ads for the DAQ over the past three years, for which DAQ paid a total of $11,440. It is estimated that DAQ will pay $2,060 for future legal ads, resulting in a cumulative loss to businesses of approximately $25,060 for the next three years.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses that publish legal ads will see a decrease in revenue of approximately $8,350 per year because of this rulemaking. DAQ identified 9 non-small businesses that have published legal ads for DAQ over the past three years, for which DAQ paid a total of $28,400. It is estimated that DAQ will pay $3,340 for future legal ads, resulting in a cumulative loss to businesses of approximately $25,060 for the next three years.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings to persons because this rulemaking 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?):
No additional costs are anticipated because no new requirements are being implemented.

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):
DAQ expects that some businesses will see a slight decrease in revenue because of this rulemaking. The rule amendments to Section R307-415-7i are expected to have fiscal impact on businesses because DAQ will not require advertisement space to run legal ads in published newspapers. Instead, those ads will be published electronically on the utahlegals.com website with an optional notice in the physical newspaper pointing the reader to the website for the full text of the permitting notice. Kimberly D. Shelley, Executive Director.

(EDITOR'S NOTE: The proposed amendment to Section R307-415-7i is under ID 53894 is this issue, October 1, 2021, of the Bulletin.)

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Cost</td>
</tr>
<tr>
<td>State Government</td>
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<td>Other Persons</td>
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<tr>
<td>Total Fiscal Cost</td>
</tr>
<tr>
<td>Fiscal Benefits</td>
</tr>
</tbody>
</table>
NOTICES OF PROPOSED RULES


(1) Issuing the Notice. Prior to issuing an approval or disapproval order[,] the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment[, the director shall]:

(a) publish a legal notice of the intent to approve or disapprove on the public legal notice website under Subsection 45-1-101(2);
(b) notify the public of the intent to approve or disapprove on the Division’s website; and
(c) post the draft permit and administrative record for the draft permit, or information on how to access the administrative record for the draft permit, on the Division’s website for the duration of the public comment period.

(2) Opportunity for Review and Comment.
(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.
(b) Public Comment.
(i) A 30-day public comment period will be established.
(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the legal notice in Subsection R307-401-7(1)(a) is published.
(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the legal notice in Subsection R307-401-7(1)(a) is published.
(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.
(v) The public comment and hearing procedure shall not be required when an order is issued [for the purpose of extending ] to extend the time required by the director to review plans and specifications.
(3) The director will consider [all] comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval or disapproval order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in Rules R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.
(b) A source that is subject to the requirements of Section R307-403-5 is not eligible for coverage under a general approval order.
(c) A source that is subject to the requirements of Section R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of Section R307-410-4 was conducted.
(d) A source that is subject to the requirements of Subsection R307-410-5(1)(c)(ii) is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of Subsection R307-410-5(1)(c)(ii) was conducted.

| State Government | $11,475 | $11,475 | $11,475 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| **Total Fiscal Benefits** | **$11,475** | **$11,475** | **$11,475** |
| **Net Fiscal Benefits** | **$0** | **$0** | **$0** |

B) Department head approval of regulatory impact analysis:

The Executive Director for the Utah 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(3)(b)(iii) Section 19-2-108

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:

11/02/2021

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

On: 11/02/2021
At: 10:00 AM MDT
See details above in Box 4.

10. This rule change MAY become effective on:

11/09/2021

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

Agency head or designee, and title: Bryce C. Bird, Division Director Date: 08/15/2021
Subsection R307-410-5(1)(c)(iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of Section R307-401-8.

(3) The public notice requirements in Section R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in Section R307-401-5 for equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in Section R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under Section R307-401-8. Cases where the director will require an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard;

(v) the director determines that an approval order is required based on the compliance history and current compliance status of the source or applicant; or

(vi) the director determines that an approval order is required for any other reason.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under Section R307-401-5 and receiving an individual approval order under Section R307-401-8. 

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under Subsection R307-401-19(7)(b) shall meet the public notice requirements in Subsection R307-401-19(3).

(c) A general approval order shall be reviewed at least every three years. The review of the general approval order shall follow the public notice requirements of Subsection R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by the approved general approval order. Modifications outside the scope authorized by the approved general approval order shall require a new application for either an individual approval order under Section R307-401-8 or a general approval order under Section R307-401-19.
General Information

2. Rule or section catchline:
R307-415-7i. Public Participation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Division of Air Quality (DAQ) is amending this rule section to replace newspaper notice of permitting actions with an electronic notice under Section 45-1-101. The rule amendments also add a requirement to publish permit notices and related documentation on DAQ’s website, therefore users will no longer have to contact DAQ to obtain hard copies. The changes allow DAQ to reach more people, increase transparency, and provide greater public access to information. DAQ estimates that the state will save approximately $11,475 per 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):
1) Replaces the requirement that the Director must give notice of initial permit issuance, significant modifications, reopenings for cause, and renewals of Title V permits in a newspaper of general circulation with an electronic notice requirement under Section 45-1-101.

2) Adds language to this rule that the notice of the comment period and permitting action will be published electronically under Section 45-1-101 and on DAQ’s website.

3) Adds a requirement that a draft permit and related documentation will be published on DAQ’s website for the duration of the public comment period.

A public hearing will be held electronically on 11/02/2021. Google Meet: https://meet.google.com/zvn-ketw-ftd
Or dial: (US) +1 513-828-0269
PIN: 107 613 936#

Fiscal Information

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

A) State budget:
There are no additional costs expected for the state budget as no new monetary requirements are being implemented. DAQ does expect to save approximately $11,475 annually by switching to electronic notices.

B) Local governments:
There are no anticipated costs or savings to local governments because this rulemaking does not apply to them.

C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses that publish legal ads will see a decrease in revenue of approximately $3,125 per year because of this rulemaking. DAQ identified 18 small businesses that have published legal ads for DAQ over the past three years, for which DAQ paid a total of $11,440. It is estimated that DAQ will pay $2,060 for future legal ads, resulting in a cumulative loss to businesses of approximately $9,380 for the next three years.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses that publish legal ads will see a decrease in revenue of approximately $8,350 per year because of this rulemaking. DAQ identified 9 non-small businesses that have published legal ads for DAQ over the past three years, for which the DAQ paid a total of $28,400. It is estimated that the DAQ will pay $3,340 for future legal ads, resulting in a cumulative loss to businesses of approximately $25,060 for the next three years.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings to persons because this rulemaking 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?):
No additional costs are anticipated because no new requirements are being implemented.

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):
DAQ expects that some businesses will see a slight decrease in revenue because of this rulemaking. The rule amendments to Section R307-415-7i are expected to have a fiscal impact on businesses because DAQ will not require advertisement space to run legal ads in published newspapers. Instead, those ads will be published electronically on the utahlegals.com website with an optional notice in the physical newspaper pointing the reader to the website for the full text of the permitting notice. 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

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<td>Non-Small Businesses</td>
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<td>$0</td>
</tr>
</tbody>
</table>

B) Department head approval of regulatory impact analysis:
The Executive Director for the Utah 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:

Section 19-2-109.1 | Section 19-2-104

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: 11/02/2021

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

<table>
<thead>
<tr>
<th>On:</th>
<th>At:</th>
<th>At:</th>
</tr>
</thead>
</table>
| 11/02/2021 | 10:00 AM MDT | See details above in Box 4.

10. This rule change MAY become effective on: 11/09/2021

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

| Agency head or designee, and title: | Bryce C. Bird, Division Director | Date: | 08/14/2021 |


The director shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

1. The director shall give notice of the permit action by publication in a newspaper of general circulation in the area where the source is located;

2. The notice shall identify:
   a. the Part 70 source;
   b. the name and address of the permittee;
   c. the name and address of the director;
   d. the activity or activities involved in the permit action;
   e. the emissions change involved in any permit modification;
   f. the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the director that are relevant to the permit decision;
   g. a brief description of the comment procedures; and
   h. the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

3. The director shall provide such notice and opportunity for participation by affected States as is provided for by Section R307-415-8.

4. Timing. The director shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.
(5) The director shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

KEY: air pollution, greenhouse gases, operating permit, emission fees
Date of Last Change: 2021[September 3, 2020]
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-109.1; 19-2-104

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R313-16-290

**Filing ID:** 53919

**Agencies Information**

1. **Department:** Environmental Quality
   **Agency:** Waste Management and Radiation Control, Radiation
   **Room no.:** Second Floor
   **Building:** MASOB
   **Street address:** 195 N 1950 W
   **City, state and zip:** Salt Lake City, UT 84116
   **Mailing address:** PO Box 144880
   **City, state and zip:** Salt Lake City, UT 84114-4880
   **Contact person(s):**
   **Name:** Thomas Ball
   **Phone:** 801-536-0251
   **Email:** tball@utah.gov

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

### General Information

2. **Rule or section catchline:**

   R313-16-290. Inspection of Radiation Machines and Facilities

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

   (Why is the agency submitting this filing?):

   When the rules were written, it was not envisioned that veterinary offices would be using fluoroscopic or computed tomography x-ray units. Because the x-ray units being used at the time were lower power with less scatter, they posed a lower risk to employees and animals if they were operating improperly so the inspection frequency for veterinary offices was set at five years like other facilities using similar equipment. Currently, nine veterinary offices in Utah have installed and are using fluoroscopic or computed tomography units. These units produce more scatter and therefore, pose a higher risk. Current rules specify that medical facilities using fluoroscopic or computed tomography units have an inspection frequency of one year due to the higher risk.

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 change will amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities. Rule formatting errors have also been corrected.

### Fiscal Information

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

   **A) State budget:**

   It is not anticipated that there will be any cost or savings to the state budget due to this change because the state does not operate a veterinary facility with either a fluoroscopic or computed tomography x-ray unit.

   **B) Local governments:**

   It is not anticipated that there will be any cost or savings to local governments due to this change because there no local governments operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

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

   There are approximately 422 small businesses in Utah providing Veterinary Services (North American Industry Classification System (NAICS) 541940) and Pet Care (812910). Of these, 177 have registered x-ray units, 6 of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every 5 years at a cost of $75 which, when divided across the 5 years is $15 per year. Computed tomography units are required to be inspected by a qualified expert once a year. The fee for a qualified expert inspection ranges from $250 to $1,500. A small business that installs a computed tomography unit would see a maximum increased cost of approximately $1,485 per year.

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

   There are five non-small businesses in Utah providing Veterinary Services (NAICS 541940). All of them have registered x-ray units and three of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every 5 years at a cost of $75 which, when divided across the 5 years is $15 per year. Computed tomography units are required to be inspected by a
qualified expert once a year. The fee for a qualified expert inspection ranges from $250 to $1,500. A non-small business that installs a computed tomography unit would see a maximum increased cost of approximately $1,485 per year.

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

It is not anticipated that there will be any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this change because there are no persons other than small businesses, non-small businesses, state, or local government entities operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

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

It is not anticipated that there will be any additional compliance costs for affected persons due to the adoption of this rule other than those mentioned above.

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):

Due to the increased risk to patients, employees, and the public of unnecessary exposure to radiation from the higher power and potential for increased scatter posed by fluoroscopic or computed tomography x-ray units the Department of Environmental Quality believes that the fiscal impact of this rule change is overcome by the need to protect patients, employees, and the public from over exposure to man-made radiation. By requiring fluoroscopic or computed tomography x-ray units used by veterinarians to be inspected at the same frequency as those used by other medical facilities the Department is safeguarding human health with balanced regulations. 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<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>
<td></td>
</tr>
<tr>
<td>Local Governments</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Small Businesses</td>
<td>$8,910</td>
<td>$8,910</td>
<td>$8,910</td>
<td></td>
</tr>
<tr>
<td>Non-Small Businesses</td>
<td>$4,455</td>
<td>$4,455</td>
<td>$4,455</td>
<td></td>
</tr>
<tr>
<td>Other Persons</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>TOTAL FISCAL COST</td>
<td>$13,365</td>
<td>$13,365</td>
<td>$13,365</td>
<td></td>
</tr>
<tr>
<td>TOTAL FISCAL BENEFITS</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>NET FISCAL BENEFITS</td>
<td>$(13,365)</td>
<td>$(13,365)</td>
<td>$(13,365)</td>
<td></td>
</tr>
</tbody>
</table>

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:

Section 19-3-104

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: 11/01/2021

10. This rule change MAY become effective on: 12/13/2021

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.
R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.
R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are in compliance with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the [D]irector or by independent qualified experts.

(2) Inspections may, at the [D]irector's discretion, be done (a) after the installation of equipment, or (b) after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

<table>
<thead>
<tr>
<th>FACILITY TYPE</th>
<th>MAXIMUM TIME BETWEEN INSPECTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital or Radiation Therapy Facility</td>
<td>one year</td>
</tr>
<tr>
<td>Medical or Veterinary Facility using Fluoroscopic or Computed Tomography (CT) Units</td>
<td>one year</td>
</tr>
<tr>
<td>Medical Facility Using Radiographic Devices</td>
<td>two years</td>
</tr>
<tr>
<td>Chiropractic</td>
<td>two years</td>
</tr>
<tr>
<td>Dental</td>
<td>five years</td>
</tr>
<tr>
<td>Podiatry</td>
<td>five years</td>
</tr>
<tr>
<td>Veterinary</td>
<td>five years</td>
</tr>
<tr>
<td>Industrial Facility with High or Very High Radiation Areas Accessible to Individuals</td>
<td>one year</td>
</tr>
<tr>
<td>Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes</td>
<td>five years</td>
</tr>
<tr>
<td>Other</td>
<td>one to five years</td>
</tr>
</tbody>
</table>

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the [D]irector.

KEY: x-rays, inspections
Date of Last Change: 2021[April 13, 2020]
Notice of Continuation: April 8, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R315-260-10 Filing ID 53912

Agency Information

1. Department: Environmental Quality

Agency: Waste Management and Radiation Control
Building: MASOB
Street address: 195 N 1950 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 144880
City, state and zip: Salt Lake City, UT 84114-4880

Contact person(s):
Name: Phone: Email:
Tom Ball 801-536-0251 tball@utah.gov

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

General Information

2. Rule or section catchline:

R315-260-10. Definitions

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

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 R315-260-10 is the addition of the definition of Aerosol Can and an update to the definition of Universal Waste. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.
Fiscal Information

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

A) State budget:
It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management of hazardous waste as universal waste is optional it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced with the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

B) Local governments:
It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced with local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

C) Small businesses ("small business" means a business employing 1-49 persons):
It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

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):
It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

<table>
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<tr>
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<tbody>
<tr>
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<tr>
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</tr>
<tr>
<td>Local Governments</td>
</tr>
<tr>
<td>Small Businesses</td>
</tr>
<tr>
<td>Non-Small Businesses</td>
</tr>
<tr>
<td>Other Persons</td>
</tr>
<tr>
<td>Total Fiscal Cost</td>
</tr>
<tr>
<td>Fiscal Benefits</td>
</tr>
</tbody>
</table>
NOTICES OF PROPOSED RULES


(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(44).

(c) Additional terms used in Rules R315-260 through R315-266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

1. "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

2. "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

3. "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

4. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion." 

5. "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

6. "AES filing compliance date" means the date that EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

7. "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

8. "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under Subsection R315-261-4(j), and accumulates the waste for more than ten days.


10. "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

11. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

12. "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

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

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:
Section 19-6-104 Section 19-6-105 Section 19-6-106
40 CFR 271.4

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: 11/01/2021

10. This rule change MAY become effective on: 12/13/2021
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
Agency head or designee, and title: Douglas J. Hansen, Division Director Date: 09/09/2021

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, that is part of a facility, for example, the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section, such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32.

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, for example a power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through R315-262-216 is also subject to Section R315-262-211 if accumulating unwanted material or hazardous waste, or both.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and any applicable closure requirements. See also "active portion" and "inactive portion".

"Component" means either the tank or ancillary equipment of a tank system.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Sections R315-264-100 through R315-264-1102 or Sections R315-265-100 through R315-265-1102, which are adopted and incorporated by reference.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Corrosion expert" means a person who, by reason of his/her knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.
"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting any of the following activities:
(i) Receiving broken or intact CRTs; and
(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
(iii) Sorting or otherwise managing glass removed from CRT monitors.

"Designated facility" means:
(i) A hazardous waste treatment, storage, or disposal facility which:
   (A) Has received a permit, or interim status, in accordance with the requirements of Rules R315-270 and R315-124;
   (B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or
   (C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and
   (D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.
(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or R315-265-72(f).
(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsections R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Division" means the Division of Waste Management and Radiation Control.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Electronic import-export reporting compliance date" means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

"Elementary neutralization unit" means a device which:
(i) [H]is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through R315-261-35 only for this reason; and
(ii) [K]inects the definition of tank, tank system, container, transport vehicle, or vessel in Section(s) R315-260-10.

"Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

"Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

"EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through R315-261-35 and to each characteristic identified in Sections R315-261-20 through R315-261-24.

"EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

"EPA region" means the states and territories found in any one of the following ten regions:
(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.
(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.
(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.
(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.
(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.
(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.
(x) Region X-Washington, Oregon, Idaho, and Alaska.

"Equivalent method" means any testing or analytical method approved by the Director under Sections R315-272-3 through R315-272-9.

"Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:
(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and
(ii) A continuous on-site, physical construction program has begun; or
(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.
"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of Title R315. A non-HSWA existing tank system or non-HS WA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained any Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or
(ii) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Facility" means:

(i) any contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to declaration. A facility may consist of several treatment, storage, or disposal operational units, for example, one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-261-24, any contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-260-10(c)(48)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.


"Federal, State and local approvals or permits necessary to begin physical construction of the site or installation of the tank system include a surface impoundment, a container storage area.

"Final closure" means the closu re of all each hazardous waste management unit[s] at the facility in accordance with any applicable closure requirements so that hazardous waste management activities under Rules R315-264 and R315-265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

"Ground water" means water below the land surface in a zone of saturation.

"Hazard class" means:

(i) the DOT hazard class identified in 49 CFR 172; and
(ii) if the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through R315-261-24.

"Hazardous secondary material" means a secondary material, for example, spent material, by-product, or sludge, which discarded, would be identified as hazardous waste under Rule R315-261.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(59), "generating facility" means any contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through R315-261-35, or a constituent listed in table 1 of Section R315-261-24.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

"Incorporator" means any enclosed device that:

(i) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
(ii) meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

(i) placement in a particular device or facility because it may cause corrosion or decay of containment materials, for example, container inner liners or tank walls; or
(ii) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, gases, or flammable fumes or gases.

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.
"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;
(ii) Lime kilns;
(iii) Aggregate kilns;
(iv) Phosphate kilns;
(v) Coke ovens;
(vi) Blast furnaces;
(vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces;
(viii) Titanium dioxide chloride process oxidation reactors;
(ix) Methane reforming furnaces;
(x) Pulping liquor recovery furnaces;
(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and
(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;
(B) The use of the device to burn or reduce raw materials to make a material product;
(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
(E) The use of the device in common industrial practice to produce a material product; and
(F) Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Injection well" means a well into which fluids are drained from hazardous waste.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of their knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of hazardous secondary material.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms, (2,200 lbs), of non-acute hazardous waste;
(ii) Greater than one kilogram, (2.2 lbs), of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or
(iii) Greater than 100 kilograms, (220 lbs), of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak[-]detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, for example, daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or manufactured materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
"Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through R315-265.

"Manifest tracking number" means: The alphanumeric identification number that is a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

"Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

"Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and R315-265-193(g)(2), a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of Title R315; except, however, for purposes of Subsection R315-265-193(g)(2) and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

"No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

"Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

"On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by [the same] a person but connected by a right-of-way which [is] the person controls and to which the public does not have access, is also considered on-site property.

"Opening" means the combustion of any material without the following characteristics:

(i) [control of combustion air to maintain adequate temperature for efficient combustion];

(ii) [containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion]; and

(iii) [control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".]

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and R315-265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the facility continue to operate.

"PCB Article" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

"Permit" means the plan approval as required by [Subsection 19-6-108(3)(a), or equivalent control document issued by the Director] to implement the requirements of the Utah Solid and Hazardous Waste Act;

"Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

"Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

"Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste...
facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or R315-265.

(144)[111] "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) [I] is a new animal drug under FFDCA [s]Section 201(w)[, or];
(ii) [I] is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug[;], or
(iii) [I] is an animal feed under FFDCA [s]Section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)(108)(i) or (ii).

(144)[112] "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

(144)[113] "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144)[114] "POHC's" means principle organic hazardous constituents.

(144)[115] "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(144)[116] "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through R315-261-24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Sections R315-261-20 through R315-261-24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through R315-261-35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(144)[117] "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(144)[118] "Qualified Ground-[ ] water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-[ ] water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-[ ] water monitoring and contaminant fate and transport.


(144)[120] "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(144)[121] "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(144)[122] "Remediation waste" means all solid and hazardous wastes, and any media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(144)[123] "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(144)[124] "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which [all or substantially all of] the waste or a substantial amount of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

(144)[125] "Representative sample" means a sample of a universe or whole, e.g., for example, waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(144)[126] "Run-off" means any rainfall, leachate, or other liquid that drains over land from any part of a facility.

(144)[127] "Run-on" means any rainfall, leachate, or other liquid that drains over land onto any part of a facility.

(144)[128] "Saturated zone" or "zone of saturation" means that part of the earth's crust in which [all] each void[s are] is filled with water.

(144)[129] "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(144)[130] "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/[ ] per lb of sludge treated on a wet-weight basis.

(144)[131] "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) [G]reater than 100 kilograms, [6] 220 lbs[ ] , but less than 1,000 kilograms, [6] 2,000 lbs[ ] of non-acute hazardous waste; and
(ii) [L] ess than or equal to [4] one kilogram, [6] 2.2 lbs[ ] of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) [L] ess than or equal to 100 kilograms, [6] 220 lbs[ ], of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).
"Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. [Such units include any area at a facility at which solid wastes have been routinely and systematically released.

"Solvent-contaminated wipe" means:
(i) A wipe [that] which, after use or after cleaning up a spill, [either]meets one or more of the following criteria:
   (A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33.[i]
   (B) Exhibits a hazardous characteristic found in Sections R315-261-20 through R315-261-24 when that characteristic results from a solvent listed in Rule R315-261.[and or]
   (C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.
   (ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

"Sorb" means to either adsorb or absorb, or both.

"Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

"Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

"State" means the state of Utah.

"Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs[2] or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, [such as wood, concrete, steel, plastic, which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxins[3] or furan congener to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body[4], for example, trailer[5] or railroad freight car[6], is a separate transport vehicle.

"Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

"Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:
(A) Whether the waste is amenable to the treatment process[7];
(B) what pretreatment, if any, is required[8];
(C) the optimal process conditions needed to achieve the desired treatment[9];
(D) the efficiency of a treatment process for a specific waste or wastes[10]; or
(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4(c)(e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

"Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize [such like the waste, or so as to recover energy or material resources from the waste, or so as to render [such like the waste non-hazardous, or less
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hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

"Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

1. Batteries as described in Section R315-273-2;
2. Pesticides as described in Section R315-273-3;
3. Mercury-containing equipment as described in Section R315-273-4;
4. Lamps as described in Section R315-273-5;
5. Antifreeze-containing tank systems as described in Section R315-273-6(a); and
6. Antifreeze as described in Section R315-273-6(b).

"Universal waste handler" means:

A. A person who treats, except under [the provisions of Subsections R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles, except under Subsection R315-273-13(f) or R315-273-33(f), universal waste; or
B. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Used oil is defined in Subsection 19-6-703(19).

"User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

1. Is required to use a manifest to comply with:
   A. Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
   B. Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and
2. Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or
3. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or R315-265-71(a)(2)(v). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

"Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

1. 100 kilograms, (220 lbs), of non-acute hazardous waste;
2. 1 kilogram, (2.2 lbs), of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(c); and
3. 1 kilogram of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

"Wastewater treatment unit" means a device which:

1. Is part of a wastewater treatment facility that is subject to regulation under either [s]Section 402 or Subsection 307(b) of the Clean Water Act;
2. Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3, and
iii. Meets the definition of tank or tank system in Section R315-260-10.

"Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.
prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 change updates the rule citations to Rule R315-273 found in Rule R315-261 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)

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

A) State budget: It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

B) Local governments: It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as
universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule, so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many persons other than small businesses are complying with this rule, so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule, it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
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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:

<table>
<thead>
<tr>
<th>Section 19-6-104</th>
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</tr>
</thead>
<tbody>
<tr>
<td>40 CFR 271.4</td>
<td></td>
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</table>

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
10. This rule change MAY become effective on: 12/13/2021

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.


The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through R315-270 except as specified in Rule R315-273 and[,] therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 are subject to regulation under Rule R315-273:
(a) [B]atteries as described in Section R315-273-2;
(b) [P]esticides as described in Section R315-273-3;
(c) [M]ercury-containing equipment as described in Section R315-273-4[; and]
(d) [L]amps as described in Section R315-273-5[;]
(e) [A]ntifreeze aerosol cans as described in Subsection R315-273-6[; and]
(f) [A]erosol cans antifreeze as described in Subsection R315-273-6(a)[; and]

KEY: hazardous waste
Date of Last Change: 2021[September 14, 2020]
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE
TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R315-264-1 Filing ID 53914

Agency Information
1. Department: Environmental Quality
Agency: Waste Management and Radiation Control, Waste Management
Building: MASOB
Street address: 195 N 1950 W

City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 144880
City, state and zip: Salt Lake City, UT 84114-4880

General Information
2. Rule or section catchline:
R315-264-1 . General - Purpose, Scope and Applicability
3. Purpose of the new rule or reason for the change:
(Why is the agency submitting this filing?):
The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 change updates the rule citations to Rule R315-273 found in Rule R315-264 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)

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A) State budget:
It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment.
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Section 19-6-104 Section 19-6-105 Section 19-6-106
40 CFR 271.4

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: 11/01/2021

10. This rule change MAY become effective on: 12/13/2021

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

Agency head or designee, and title: Douglas J. Hansen, Division Director
Date: 09/09/2021


(a) The purpose of Rule R315-264 is to establish minimum standards that define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to each owner and operator of facilities that treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or R315-261.

(c) Reserved

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 apply to each owner or operator of a POTW that treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to the following:

(1) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-264 by Section R315-262-14.

(2) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), R315-261-6(a)(3), and R315-261-6(a)(4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through R315-266-23, R315-266-70, R315-266-80, or R315-266-100 through R315-266-112.

(3) A generator accumulating waste on site in compliance with Section R315-262-14, R315-262-15, R315-262-16, or R315-262-17.

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70.

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved.

(8)(i) Except as provided in Subsection R315-264-1(g)(8)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) a discharge of a hazardous waste;

(B) an imminent and substantial threat of a discharge of hazardous waste; or

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by Rule R315-264 shall comply with the applicable requirements of Sections R315-264-30 through R315-264-35, R315-264-37, and R315-264-50 through R315-264-56.

(iii) Any person who is covered by Subsection R315-264-1(g)(8)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of their official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or
the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

9. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

10. The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsections R315-264-17[b][2] and Sections R315-264-171[e] and R315-264-172 are complied with.

11. Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below in Subsections R315-264-1(g)(1)(i) through (vi). These handlers are subject to regulation under Rule R315-273, if handling the following universal wastes:
   (i) batteries as described in Section R315-273-2;
   (ii) pesticides as described in Section R315-273-3;
   (iii) mercury-containing equipment as described in Section R315-273-4;
   (iv) lamps as described in Section R315-273-5;
   (v) [aerosol cans] antifreeze as described in Subsection R315-272-6[iv]; and
   (vi) [antifreeze] aerosol cans as described in Subsection R315-264-1(g)(1)[vi].

12. Reserved.

13. Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-264 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of Rule R315-264 apply to each owner or operator of facilities that treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved.

(j) The requirements of Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, R315-264-50 through R315-264-56, and R315-264-101 do not apply to remediation waste management sites. However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, R315-264-50 through R315-264-56, and R315-264-101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, R315-264-50 through R315-264-56, and R315-264-101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through R315-264-19, R315-264-30 through R315-264-37, and R315-264-50 through R315-264-56, owners or operators of remediation waste management sites shall do the following:
   (1) Obtain an EPA identification number by applying to the Director using EPA Form 8700-12.
   (2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and R315-268, and shall be kept accurate and up to date.

3. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:
   (i) physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site shall not injure people or livestock who may enter the active portion of the remediation waste management site; and
   (ii) disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, shall not cause a violation of the requirements of Rule R315-264.

4. Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment and shall remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner or operator shall take remedial action immediately.

5. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of Rule R315-264, and on how to respond effectively to emergencies.

6. Take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes[,] and prevent threats to human health and the environment from ignitable, reactive and incompatible waste.


8. Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave.

9. Develop and maintain a construction quality assurance program for each surface impoundment, waste pile and landfill unit that are required to comply with Subsections R315-264-221(c) and R315-264-221(d), R315-264-251(c) and R315-264-251(d), and R315-264-301(c) and R315-264-301(d) at the remediation waste management site, according to the requirements of Section R315-264-19.

10. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall be implemented immediately whenever a fire, explosion, or release of
hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(11) Designate at least one employee, either on the facility premises or on call, that is, available to respond to an emergency by reaching the facility quickly, to coordinate emergency response measures. This emergency coordinator shall be thoroughly familiar with the facility's contingency plan, operations and activities at the facility, the location and characteristics of waste handled, the location of the records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(12) Develop, maintain, and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through R315-264-1(j)(6) and R315-264-1(j)(9) through R315-264-1(j)(10).


KEY: hazardous waste, TSD facilities

Date of Last Change: 2021[September 14, 2020]
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

<table>
<thead>
<tr>
<th>Utah Admin. Code</th>
<th>Filing ID</th>
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<tr>
<td>R315-265</td>
<td>53915</td>
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</table>

Agency Information

1. Department: Environmental Quality
Agency: Waste Management and Radiation Control, Waste Management
Building: MASOB
Street address: 195 N 1950 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 144880
City, state and zip: Salt Lake City, UT 84114-4880

Contact person(s):
Name: Tom Ball
Phone: 801-536-0251
Email: tball@utah.gov

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

General Information

2. Rule or section catchline:
R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

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

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 change updates the rule citations to Rule R315-273 found in Rule R315-265 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has incorporated 40 CFR 265.1100 through 40 CFR 265.1102 as Section R315-265-1100 through Section R315-265-1102 as part of an ongoing effort to update Rule R315-265. The Division also corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)

Fiscal Information

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

A) State budget:
It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

B) Local governments:
It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown
how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule, it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>FY2022</th>
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</tbody>
</table>

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.
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 19-6-104  Section 19-6-105  Section 19-6-106
40 CFR 271.4

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: 11/01/2021

10. This rule change MAY become effective on: 12/13/2021

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

Agency head or designee, and title: Douglas J. Hansen, Division Director
Date: 09/09/2021


R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-265-1. Incorporation, General – Purpose, Scope, and Applicability.

40 CFR 265.270 through 265.282, 265.300 through 265.316, 265.340 through 265.352, 265.370 through 265.383, 265.400 through 265.406, 265.430 through 265.445, 265.1050 through 265.1064, 265.1100 through 265.1102, 265.1200 through 265.1202, 265.1300 through 265.1316 and Appendices I and III through VI of 40 CFR 265, 2015 edition, as amended by 81 FR 85827, are adopted and incorporated by reference except that "Director" is substituted for references to "Regional Administrator", and for references to "EPA" or "Environmental Protection Agency" except for references to "EPA identification number" and [where] when EPA is used in reference to actions under Subsection R315-268-42(b) and in Subsection R315-265-71(a)(3).

(a) The purpose of Rule R315-265 is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in Subsection R315-265-1080(b), the standards of Rule R315-265, and of Sections R315-264-552, R315-264-553, and R315-264-554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under [s]Section 3005(e) of RCRA and Section R315-270-10 until either a permit is issued under Rule R315-270 or until applicable Rule R315-265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by [s]Section 3010(a) of RCRA, failed to file Part A of the permit application as required by Subsections R315-270-10 (e) and R315-270-10(g), or both. These standards apply to treatment, storage and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in Rule R315-265 or Rule R315-261.

Comment: As stated in [s]Section 3005(a) of RCRA, after the effective date of regulations under that section, which are Rules R315-270 and R315-124, the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(c) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(c) The requirements of Rule R315-265 do not apply to the following:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act.

Comment: Rule R315-265 does apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection R315-265-1(b).

(2) Reserved.

(3) The owner or operator of a POTW that treats, stores, or disposes of hazardous waste.

Comment: The owner or operator of a facility under Subsections R315-265-1(c)(1) through R315-265-1(c)(3) is subject to the requirements of Rule R315-264 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122, or are required by 40 CFR 144.14.

(4) Reserved.

(5) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-265 by Section R315-262-14.

(6) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), R315-261-6(a)(3), and R315-261-6(a)(4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through R315-266-23, R315-266-70, R315-266-80, or R315-266-100 through R315-266-112.

(7) A generator accumulating waste on-site in compliance with applicable conditions for exemption in Sections R315-262-14 through R315-262-17 and Sections R315-262-200 through R315-262-216 and R315-262-230 through R315-262-233, except to the extent the requirements of Rule R315-265 are included in those sections.

(8) A farmer disposing of waste pesticides from [his] the farmer's own use in compliance with Section R315-262-70.

(9) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, Table Treatment Standards for Hazardous Wastes, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator shall comply with the requirements set out in Subsection R315-265-17(b).
(11)(i) Except as provided in Subsection R315-265-1(c)(11)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:
(A) a discharge of a hazardous waste; 
(B) an imminent and substantial threat of a discharge of a hazardous waste; or 
(C) a discharge of a material that, if discharged, becomes a hazardous waste. 
(ii) An owner or operator of a facility otherwise regulated by this Rule R315-265 shall comply with the applicable requirements of Sections R315-265-30 through R315-265-37 and Sections R315-265-50 through R315-265-56. 
(iii) Any person who is covered by Subsection R315-265-1(c)(11)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-265 and Rule R315-124 for those activities. 

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less. 

(13) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and Subsection R315-265-17(b)7 and Sections R315-265-171 and R315-265-172 are complied with. 

(14) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed in Subsections R315-265-1(c)(14) through (vi). These handlers are subject to regulation under Rule R315-273, if handling the following universal wastes: 
(i) batteries as described in Section R315-273-2; 
(ii) pesticides as described in Section R315-273-3; 
(iii) mercury-containing equipment as described in Section R315-273-5; 
(iv) lamps as described in Section R315-273-5; 
(v) antifreeze as described in Subsection R315-273-6; and 
(vi) aerosol cans as described in Subsection R315-273-7. 

(15) Reserved 

(16) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-265 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals. 

(d) The following hazardous wastes shall not be managed at facilities subject to regulation under Rule R315-265. 
(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless: 
(i) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system; 
(ii) the waste is stored in tanks or containers; 
(iii) the waste is stored or treated in waste piles that meet the requirements of Subsection R315-264-250(c) as well as other applicable requirements of Sections R315-265-250 through R315-265-260; 
(iv) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR 265.352, which is adopted by reference; or 
(v) the waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR 265.383, which is adopted and incorporated by reference. 

(e) The requirements of Rule R315-265 apply to owners or operators of facilities which treat, store or dispose of hazardous waste referred to in Rule R315-268, and the Rule R315-268 standards are considered material conditions or requirements of the Rule R315-265 interim status standards.


The requirements of Sections R315-265-1100 through R315-265-1102 apply to owners or operators who store or treat hazardous waste in units designed and operated under Section R315-265-1101. The owner or operator is not subject to the definition of land disposal in RCRA Section 3004(k) provided that the unit: 
(a) is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of that equipment with containment walls; 
(b) has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit; 
(1) if the unit is used to manage liquids, has: 
(i) a primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier; 
(2) a liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and 
(3) a secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Subsection R315-265-1101(b)(4); 
(d) has controls as needed to prevent fugitive dust emissions; and 
(e) is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.


(a) Each containment building shall comply with the following design standards. 
(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, for example, precipitation, wind, run-on, and to assure containment of managed wastes. 
(2) The floor and containment walls of the unit, including the secondary containment system if required by Subsection R315-265-1101(b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed.
managed in the containment building and of sufficient strength and of materials that are chemically resistant to the waste and liquids (iii) The secondary containment system shall be constructed in the building.

(ii) If treatment is to be conducted in the building, an area in which treatment will be conducted shall be designed to prevent the accumulation of liquid on the primary barrier of the containment building:

(i) the primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed. (b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids, the presence of which is determined by the paint filter test, a visual examination, or other appropriate means, the owner or operator shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier, for example, a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building;

(i) the primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that can detect failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) constructed with a bottom slope of 1 % or more; and

(B) constructed of a granular drainage material with a hydraulic conductivity of $1 \times 10^{-2}$ cm per sec or more and a thickness of 12 inches, 30.5 cm, or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10^{-5}$ m$^2$ per sec or more.

(ii) If treatment is to be conducted in the building, an area in which treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. Containment buildings may serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building may serve as an external liner system for a tank, provided it meets the requirements of Subsection R315-265-193(e)(1). In addition, the containment building shall meet the requirements of Subsections R315-265-193 (b) and (c) to be considered an acceptable secondary containment system for a tank.

(4) For existing units other than 90-day generator units, the owner or operator shall:

(i) provide written notice to the director of their request by February 18, 1993 that describes the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) respond to any comments from the director on these plans within 30 days; and

(iii) fulfill the terms of the revised plans, if those plans are approved by the director.

(c) Owners or operators of containment buildings shall comply with the following.

(1) Use controls and practices to ensure containment of the hazardous waste within the unit, and, at a minimum:

(i) maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

(ii) maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(iii) take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste.

An area shall be designated to decontaminate equipment and any rinsewater shall be collected and properly managed; and

(iv) take measures to control fugitive dust emissions so that any openings, doors, windows, vents, cracks, exhibit no visible emissions. In addition, each associated particulate collection device, for example, fabric filter, electrostatic precipitator, shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at any time during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of Subsections R315-265-1101(a), (b), and (c).

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures:

(i) Upon detection of a condition that has led to a release of hazardous waste, for example, upon detection of leakage from the primary barrier, the owner or operator shall:

(A) enter a record of the discovery in the facility operating record;

(B) immediately remove the portion of the containment building affected by the condition from service;

(C) determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and
(D) within 7 days after the discovery of the condition, notify the director of the condition, and within 14 working days, provide a written notice to the director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing the repairs and cleanup the owner or operator shall notify the director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-265-1101(c)(3)(ii)(D).

(4) Inspect and record in the facility's operating record at least once each seven days data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(1) design and operate each area in accordance with the requirements enumerated in Subsections R315-265-1101(a) through (c);

(2) take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of Sections R315-265-1100 through R315-265-1102, the director may waive requirements for secondary containment for a permitted containment building if the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and if containment of managed wastes and liquids may be assured without a secondary containment system.


(a) At closure of a containment building, the owner or operator shall remove or decontaminate any waste residues, contaminated containment system components, liners, contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Subsection R315-265-1100 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet the requirements specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

(b) If, after removing or decontaminating any residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection R315-265-1102(a), the owner or operator finds that contaminated subsoils cannot be practicably removed or decontaminated, the owner or operator shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills, 40 CFR 265.310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet the requirements for landfills specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

KEY: hazardous waste, TSD facilities, interim status
Date of Last Change: 2021[September 14, 2020]
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106
substantive differences between the repealed rule and the reenacted rule):

The change adds aerosol cans to the list of universal wastes that are exempt from being regulated under Sections R315-268-7 and R315-268-50. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.

Fiscal Information

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

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

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NOTICES OF PROPOSED RULES

Small Businesses $0 $0 $0
Non-Small Businesses $0 $0 $0
Other Persons $0 $0 $0
Total Fiscal Cost $0 $0 $0

Fiscal Benefits

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

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:
Section 19-6-104 Section 19-6-105 Section 19-6-106
40 CFR 271.4

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: 11/01/2021

10. This rule change MAY become effective on: 12/13/2021
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
Agency head or designee, and title: Douglas J. Hansen, Division Director
Date: 09/09/2021

R315-268-1. Land Disposal Restrictions -- Purpose, Scope, and Applicability.
(a) Rule R315-268 identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.
(b) Except as specifically provided otherwise in Rule R315-268 or Rule R315-261, the requirements of Rule R315-268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.
(c) Restricted wastes may continue to be land disposed as follows:
   (1) Where persons have been granted an extension to the effective date of a prohibition under Sections R315-268-20 through R315-268-39 or pursuant to Section R315-268-5, with respect to those wastes covered by the extension;
   (2) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;
   (3) Hazardous wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes:
      (i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and
      (ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24, at the point of injection.
   (4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Section R315-268-40, or are D003 reactive cyanide:
      (i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under §402 of the Clean Water Act;
      (ii) The wastes are treated for purposes of the pretreatment requirements of §307 of the Clean Water Act; or
      (iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in Subsection R315-268-37(a); and
      (iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal that is placement in a surface impoundment.
   (d) The requirements of Rule R315-268 shall not affect the availability of a waiver under §121d(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
   (e) The following hazardous wastes are not subject to any provision of Rule R315-268:
(1) Waste generated by very small quantity generators, as defined in Section R315-260-10;
(2) Waste pesticides that a farmer disposes of pursuant to Section R315-262-70;
(3) Wastes identified or listed as hazardous after November 8, 1984 [for which EPA has not promulgated land disposal prohibitions or treatment standards]; and
(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations, [e.g., for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, are exempt from Sections R315-268-7 and R315-268-50 for the hazardous wastes listed [below in Subsections R315-268-1(f)(1) through (5)]. These handlers are subject to regulation under Rule R315-273[.] if handling the following universal wastes:

(1) Batteries as described in Section R315-273-2;
(2) Pesticides as described in Section R315-273-3;
(3) Mercury-containing equipment as described in Section R315-273-4[.];
(4) Lamps as described in Section R315-273-5[.]; and
(5) Aerosol cans as described in Section R315-273-6.

KEY: hazardous waste, land disposal restrictions
Date of Last Change: 2021[September 14, 2020]
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE
TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R315-270-1 Filing ID 53917

Agency Information
1. Department: Environmental Quality
Agency: Waste Management and Radiation Control, Waste Management
Building: MASOB
Street address: 195 N 1950 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 144880
City, state and zip: Salt Lake City, UT 84114-4880

Contact person(s):
Name: Phone: Email:
Tom Ball 801-536-0251 tball@utah.gov

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

General Information
2. Rule or section catchline:
R315-270-1. Hazardous Waste Permit Program - Purpose and Scope of These Rules

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 this rule adds aerosol cans to the list of universal wastes that handlers and haulers are not required to obtain a hazardous waste permit to manage. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment...
does not significantly change how aerosol cans are managed under this rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how hazardous waste is managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how hazardous waste is managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how hazardous waste is managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how hazardous waste is managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

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| Fiscal Benefits | State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |
| Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |
| Total Fiscal Benefits | $0 | $0 | $0 |

R315-270. Hazardous Waste Permit Program.

R315-270-1. Hazardous Waste Permit Program — Purpose and Scope of These Rules.

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the director, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., and Section 6021, et seq., and who has submitted a proposed hazardous waste permit as required by Section R315-270-1 and Section 19-6-108 and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, the director shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date that the required information is provided to the director as required by Rule R315-270.

(b)(1) The director shall review each proposed hazardous waste permit application to determine whether the application will be in accord with Rules R315-260 through R315-266, R315-268, R315-270, and R315-273, and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, the director shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date that the required information is provided to the director as required by Rule R315-270.

(2) Any permit application that does not meet the requirements of Rules R315-260 through R315-266, R315-268, R315-270, and R315-273 shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the director for a decision or seek judicial relief requiring a decision of approval or disapproval.

(3) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the director sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the director gives notice to a particular facility that it shall submit part B of the application.

(c) Scope of the hazardous waste permit requirement. Section 19-6-108 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in Rule R315-261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in Section R315-270-2. Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, in accordance with Section R315-265-115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections R315-270-1(c)(5) and R315-270-1(c)(6), or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection R315-270-1(c)(7). If a post-closure permit is required, the permit shall address applicable Rule R315-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under Section R315-270-1.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for the following:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a Utah or Federal UIC permit, shall be deemed to have a "permit by rule" for the injection well itself if they comply with the requirements of Subsection R315-270-60(b).
(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an National Pollutant Discharge Elimination System (NPDES) permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a "permit by rule" for that waste if they comply with the requirements of [Section Subsection] R315-270-60(c).

(2) Specific exclusions and exemptions. The following are not required to obtain a hazardous waste permit:

(i) A generator who accumulates hazardous waste on-site in compliance with the conditions for exemption provided in Sections R315-262-14, R315-262-15, R315-262-16, and R315-262-17.

(ii) A farmer who disposes of hazardous waste pesticides from their own use as provided in Section R315-262-70.

(iii) A person who owns or operates facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulation under Rule R315-270 by Section R315-261-4 or Section R315-262-14, very small quantity generator exemption.

(iv) An owner or operator of totally enclosed treatment facilities as defined in Section R315-260-10.

(v) An owner and operator of one or more elementary neutralization units or wastewater treatment units as defined in Section R315-260-10.

(vi) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(vii) A person adding absorbent material to waste in a container, as defined in Section R315-260-10, and a person adding waste to absorbent material in a container, provided that these actions shall occur at the time waste is first placed in the container and Subsection R315-264-17(b) and Sections R315-264-171 and R315-264-172 are complied with.

(viii) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, managing the wastes listed in Subsections R315-270-1(c)(2)(viii) through (E). These handlers are subject to regulation under Rule R315-273 if handling the following universal wastes:

(A) batteries as described in Section R315-273-2;

(B) pesticides as described in Section R315-273-3;

(C) mercury-containing equipment as described in Section R315-273-4;

(D) lamps as described in Section R315-273-5; and

(E) aerosol cans as described in Section R315-273-6.

(ix) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as described in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) a discharge of a hazardous waste;

(B) an imminent and substantial threat of a discharge of hazardous waste; or

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-270 for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The [D]irector may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to each of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Rule R315-265 standards shall obtain a post-closure permit unless they can demonstrate to the [D]irector that the closure met the standards for closure by removal or decontamination in Section R315-264-228, Subsection R315-264-248(e), or Section R315-264-258, respectively. The demonstration may be made in the following ways:

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that Rule R315-264 closure by removal standards were met. If the [D]irector believes that Rule R315-264 standards were met, the [D]irector shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in Subsection R315-270-1(c)(6).

(ii) If the owner or operator has not submitted a part B application for a post-closure permit, the owner or operator may petition the [D]irector for a determination that a post-closure permit is not required because the closure met the applicable Rule R315-264 closure standards.

(A) The petition shall include data demonstrating that closure by removal or decontamination standards of Rule R315-264 were met.

(B) The [D]irector shall approve or deny the petition according to the procedures outlined in Subsection R315-270-1(c)(6).

(6) Procedures for closure equivalency determination.

(i) If a facility owner or operator seeks an equivalency demonstration under Subsection R315-270-1(c)(5), the [D]irector shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The [D]irector shall also, in response to a request or at the [D]irector's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Rule R315-265 closure to a Rule R315-264 closure. The [D]irector shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as that notice of the opportunity for the public to submit written comments is given, and the two notices may be combined.

(ii) The [D]irector shall determine whether the Rule R315-265 closure met the Rule R315-264 closure by removal or decontamination requirements within 90 days of its receipt. If the [D]irector finds that the closure did not meet the applicable Rule R315-264 standards, the [D]irector shall provide the owner or operator with a written statement of the reasons why the closure failed to meet Rule R315-264 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving the written statement. The [D]irector shall review any additional information submitted and make a final determination within 60 days.

NOTICES OF PROPOSED RULES

UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19 107
(iii) If the [D] director determines that the facility did not close in accordance with Rule R315-264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the [D] director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of Section R315-265-121. "Enforceable document" means an order, a permit, or other document issued by the [D] director including[, but not limited to,] a corrective action order issued by EPA under [a]Section 300(h), a CERCLA remedial action, or a closure or post-closure permit.

KEY: hazardous waste
Date of Last Change: 2021[September 14, 2020]
Notice of Continuation: January 14, 2021
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R315-273 Filing ID 53918

Agency Information
1. Department: Environmental Quality
Agency: Waste Management and Radiation Control, Waste Management
Building: MASOB
Street address: 195 N 1950 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 144880
City, state and zip: Salt Lake City, UT 84114-4880
Contact person(s):
Name: Phone: Email:
Tom Ball 801-536-0251 tball@utah.gov

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

General Information
2. Rule or section catchline:
R315-273. Standards for Universal Waste Management

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in Rule R315-273 of the Utah Administrative Code prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

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 amended rule allows aerosol cans containing pesticides to be managed as aerosol can universal waste. The rule renumbers Section R315-273-6 to Section R315-273-7 and creates a new Section R315-273-6 Standards for Universal Waste Management - Applicability - Aerosol Cans and moves the aerosol can subsection from the new Section R315-273-7 to the new Section R315-273-6. The rule amends the definition of aerosol can so that it is consistent with the Department of Transportation definition of aerosol can. The amended rule will allow handlers to sort aerosol cans by type, consolidate intact aerosol cans in larger containers, and remove actuators to reduce the risk of accidental release. The amended rule no longer requires handlers to separate aerosol cans whose contents may be incompatible but requires containers being used to accumulate aerosol cans be protected from sources of heat. Citations to Section R315-262-34 which no longer exits are updated to the proper, current citations. The rule amends the labeling and marking requirements for containers of universal waste aerosol cans. The amended rule contains a requirement that handlers who puncture aerosol cans must maintain a copy of the puncturing device manufacturers instructions and ensure that employees are trained. It also requires empty, punctured aerosol cans to be recycled. The rule also exempts aerosol cans that meet the standard for empty containers from being managed as universal waste.

In addition to the changes being made for consistency with the federal regulations for management of aerosol cans as universal waste the Division of Waste Management and Radiation Control, Waste Management (Division) has amended the definition of antifreeze contained in Rule R315-273. The definition is being expanded to include not only antifreeze used as an engine coolant, but antifreeze used in electronics cooling applications, winterizing equipment and used in heating, ventilating and air conditioning units.

The Division has corrected typographical and formatting errors in this rule in addition to the changes discussed above.
Fiscal Information

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

A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule, and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. 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.)

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Fiscal Benefits

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</tbody>
</table>
Pesticides as described in Section R315-273-2;

batteries as described in Section R315-273-1;

Mercury-containing equipment as described in Section R315-273-3;

Lamps as described in Section R315-273-4;

Antifreeze aerosol cans as described in Section R315-273-5;

Aerosol cans as described in Section R315-273-6(ba); and

Antifreeze as described in Section R315-273-6(b).
NOTICES OF PROPOSED RULES


(a) Aerosol cans covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b).

(b) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following types of aerosol cans:

(1) Aerosol cans that are not yet waste under Rule R315-261. Subsection R315-273-6(c) describes when an aerosol can becomes a waste.

(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in Sections R315-261-2 through R315-261-24 or the aerosol can contains a substance that is listed in Sections R315-261-30 through R315-261-35.

(c) Generation of waste aerosol cans.

(1) A used aerosol can becomes a waste on the date it is discarded.


(a) "Aerosol can" means [a container with a total capacity of no more than 24 ounces of gas under pressure and is used to aeros and dispense any material through a valve in the form of a spray or foam] a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.
(b) "Ampule" means an air-tight vial made of glass, plastic, metal, or any combination of these materials.

c) "Antifreeze" means [an ]ethylene glycol or propylene glycol including aggregated batches of ethylene glycol or propylene glycol used as a heat transfer medium in an internal combustion engine; heating, ventilating, and air conditioning units; and electronics cooling applications; or used for winterizing equipment[ based mixture that lowers the freezing point of water and is used as an engine coolant].

d) "Battery" means a device consisting of one or more electrically connected electrochemical cells, which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

e) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsections R315-273-13(a) and R315-273-13(c) and Subsections R315-273-33(a) and R315-273-33(c). A facility, at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(f) "Drum-top lamp crusher" means a device attached to a drum or container that mechanically reduces the size of lamps and includes a bag filter followed in series by a HEPA filter and an activated carbon filter. Drum-top crushers are the only devices that can be approved for the use of crushing lamps.

(g) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, [‡]7 U.S.C. 136-136y[‡].

(h) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(i) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include[ but are not limited to] fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(j) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in Section R315-273-9 who accumulates 5,000 kilograms or more total of universal waste; batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

(k) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(l) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, [provided that] if the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the [right of way] right-of-way. Non-contiguous properties owned by [the same ] a person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

(m) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1) [¶] is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA) [§]Section 201[w]; or

2) [¶] is a new animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

3) [¶] is an animal feed under FFDCA [§]Section 201(x) that bears or contains any substances described by Subsections R315-273-9(m)[1] or R315-273-9(m)[2]; above.

(n) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this Section R315-273-9 who does not accumulate 5,000 kilograms or more of universal waste, batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively, at any time.

(o) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)[2] or R315-273-33(c)[2].

(p) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Rule R315-273:

1) [¶] batteries as described in Section R315-273-2;

2) [¶] pesticides as described in Section R315-273-3;

3) [¶] mercury-containing equipment as described in Section R315-273-4;

4) [¶] lamps as described in Section R315-273-5;

5) [¶] antifreeze as described in [Subsection Section R315-273-6(a)]; and

6) [¶] aerosol cans as described in [Subsection Section R315-273-6(b)].

(q) "Universal Waste Handler":

1) [¶] means:

i) [¶] a generator, as defined in Section R315-273-9, of universal waste; or

ii) [¶] the owner or operator of a facility, including [all] any contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

2) Does not mean:

i) [¶] a person who treats, except under [the provisions of ]Subsections R315-273-13(a) or R315-273-13(c), or R315-273-33(a) or R315-273-33(c), disposers of, or recycles, except under Subsections R315-273-13(f) or R315-273-33(f), universal waste; or

ii) [¶] engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(r) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(s) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(a) Batteries. A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

(i) Sorting batteries by type;
(ii) Mixing battery types in one container;
(iii) Discharging batteries so as to remove the electric charge;
(iv) Regenerating used batteries;
(v) Disassembling batteries or battery packs into individual batteries or cells;
(vi) Removing batteries from consumer products; or
(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, such as battery pack materials, or discarded consumer products, as a result of the activities listed above in Subsection R315-273-13(a)(2), shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(b) Pesticides. A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(2) A container that does not meet the requirements of Subsection R315-273-13(b)(1), provided that if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(b)(1);

(3) A tank that meets the requirements of 40 CFR Sections R315-265-1 through R315-265-202, except for 40 CFR Subsection R315-265-1-197(c) and 40 CFR Section R315-265-3-200, and 40 CFR Section is adopted by reference in R315-265-265; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A small quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided if the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii)Follows all the requirements for removing ampules from a container, such as a tray or pan sufficient to collect and contain any mercury released from the ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that container device to a container that meets the requirements of Section R315-262-34 and is subject to the applicable requirements of Rules R315-260 through R315-270;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the container device to a container that meets the requirements of Section R315-262 through R315-270;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided if the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all the requirements for removing ampules and managing removed ampules under Subsection R315-273-13(c)(2); and

(4) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether or both of the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24:

NOTICES OF PROPOSED RULES
(A) [M]ercury or clean-up residues resulting from spills or leaks;[and/or]
(B) [O]ther solid waste generated as a result of the removal of mercury-containing ampules or housings, [e.g.,] such as the remaining mercury-containing device;[or both.

(ii) If the mercury, residues,[and/or] other solid waste, or any combination of the three exhibits a characteristic of hazardous waste, it shall be managed in compliance with [all] the applicable requirements of Rules R315-260 through R315-266, R315-268, and R315-270. The handler is considered the generator of the mercury, residues, [and/or] other waste, or any combination of the three and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, [and/or] other solid waste, or any combination of the three is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(d) Lamps. A small quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps [provided that] after the small quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the small quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) [T]he lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

(ii) [T]he lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in excess of the manufacturer's specifications;

(iii) [T]he drum-top lamp crusher shall have a filtration system consisting of, at a minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) [T]he drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) [E]nvironmental air sampling filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) [A] spill clean-up kit is available;

(vii) [T]he area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) [A]n employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) [A]n employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) [A]n operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of [all] mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The small quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing of the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-13(d)(6).

(7) The small quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-13(d)(6) using one of the options in Subsections R315-261-143(a) through R315-261-143(c). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-13(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with [all] the applicable requirements of Rules R315-260 through R315-266 and R315-268.

(e) Antifreeze. A small quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) [A]n container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;[and/or]

(2) [A]n container that does not meet the requirements of Subsection R315-273-13(e)(1), [provided that] if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1),[and/or]

(3) [A]n tank that meets the requirements of [40 CFR 265, Subsection R315-265, 201, 40 CFR 265, 200, and 201, 40 CFR 265 is adopted by reference in R315-265]; or

(4) [A] transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:

(1) [A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause release under reasonably foreseeable conditions in a separate container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause release under reasonably foreseeable conditions.] Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause release under reasonably foreseeable conditions, and is protected from sources of heat.

(2) [A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause release under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.] Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-13(f)(4).

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) sorting aerosol cans by type;

(ii) mixing intact cans in one container; and

(iii) removing actuators to reduce the risk of accidental release.

(3)(d) A small quantity handler of universal waste [may puncture universal waste aerosol cans to remove the contents of the aerosol can, or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-14, R315-262-15, R315-262-16 or R315-262-17.]

(v) [Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and] Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) [Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.] If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.

(R315-273-14) Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste – Labeling[] and Marking. A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as

(D) operation and maintenance of the unit;

(E) waste characterization;

(f) segregation of incompatible wastes;
(a) Universal waste batteries, [i.e., that is, each battery, or a container in which the batteries are contained,] shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Battery(ies)\[;\]", or "Waste Battery(ies)\[;\]", or "Used Battery(ies)\[;\]."

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall be labeled or marked clearly with:

1. The label that was on or accompanied the product as sold or distributed; and
2. The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)\[;\]."

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall be labeled or marked clearly with:

1. (i) The label that was on the product when purchased, if still legible;
2. If using the labels described in Subsection R315-273-14(c)(1) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;
3. If using the labels described in Subsections R315-273-14(c)(1) and (ii) is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and
4. The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)\[;\]."

(d)(1) Universal waste mercury-containing equipment, [i.e., that is, each device, or a container in which the equipment is contained,] shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment\[;\]", "Waste Mercury-Containing Equipment\[;\]", or "Used Mercury-Containing Equipment\[;\]."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)\[;\]", "Waste Mercury Thermostat(s)\[;\]", or "Used Mercury Thermostat(s)\[;\]."

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)\[;\]", or "Waste Lamp(s)\[;\]", or "Used Lamp(s)\[;\]."

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste-Antifreeze".

(g) Universal waste aerosol cans, [i.e., that is, each aerosol can, or a container in which the universal waste aerosol cans are contained or accumulated,] shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)\[;\]", "Waste Aerosol Can(s)\[;\]", or "Used Aerosol Can(s)\[;\]."


(a)(1) Except as provided in Subsections R315-273-32(a)(2) and R315-273-32(a)(3), a large quantity handler of universal waste shall have sent written notification of universal waste management to the Director, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Director of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under Section R315-273-32 except as required in Subsection R315-273-33(d)(3).

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under Section R315-273-32.

(b) This notification shall include:

1. The name and mailing address;
2. The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;
3. The address or physical location of the universal waste management activities;
4. A list of all the types of universal waste managed by the handler, for example, batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans; and
5. A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.


(a) Batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

2. A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

   (i) Sorting batteries by type;
   (ii) Mixing battery types in one container;
   (iii) Discharging batteries so as to remove the electric charge;
   (iv) Regenerating used batteries;
   (v) Disassembling batteries or battery packs into individual batteries or cells;
   (vi) Removing batteries from consumer products; or
   (vii) Removing electrolyte from batteries.

3. A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, [i.e., such as battery pack materials\[;\]] or discarded consumer products, as a result of the activities listed in Subsection R315-273-33(a)(2), shall determine whether the electrolyte and\[;\] other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

   (i) If the electrolyte \[and\] other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator.
of the hazardous electrolyte and [ore] other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

(b) Pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) [A] a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

(2) [A] a container that does not meet the requirements of Subsection R315-273-33(b)(1), [provided that if] the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-33(b)(1);[ae]

(3) [A] a tank that meets the requirements of [40 CFR Sections R315-265]-190 through R315-265-202, except for [40 CFR Subsection R315-265]-197(c) and [40 CFR Section R315-265]-200[ and 201, 40 CFR 265 is adopted by reference in R315-265]; or

(4) [A] a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

c) Mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment [provided if] the handler:

(i) [K] removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) [K] removes the ampules only over or in a containment device, [e.g., such as a tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage];

(iii) [E] ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of Section R315-262-34[ and the applicable requirements of Rules R315-260 through R315-270];

(iv) [I] immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [Section R315-262-34]Rules R315-260 through R315-270;

(v) [E] ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) [E] ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) [S] stores removed ampules in closed, non-leaking containers that are in good condition; and

(viii) [P] packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment [provided if] the handler:

(i) [I] immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) [E] follows all the requirements for removing ampules and managing removed ampules under Subsection R315-273-33(c)(2); and

(4)(i) [A] a large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether one or both of the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24:

(A) [M] mercury or clean-up residues resulting from spills or leaks[ and/or];

(B) [O] other solid waste generated as a result of the removal of mercury-containing ampules or housings, [e.g., such as] the remaining mercury-containing device, or both.

(ii) If the mercury, residues, and/or other solid waste, or any combination of the three exhibits a characteristic of hazardous waste, it shall be managed in compliance with all the applicable requirements of Rules R315-260 through R315-266, R315-268 and R315-270. The handler is considered the generator of the mercury, residues, and/or other waste, or any combination of the three and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, and/or other solid waste, or any combination of the three is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste rules or regulations.

d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps [provided that] after the [L] large quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall
demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall have a filtration system consisting of, at a minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filtration systems are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) The employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) The employee using the drum-top lamp crusher is trained annually in emergency procedures; and

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of any mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The large quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-33(d)(6).

(7) The large quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-33(d)(6) using one of the options in Subsections R315-261-143(a) through R315-261-143(e).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through R315-266 and R315-268.

(e) Antifreeze. A large quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(c)(1), provided that if the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(c)(1); or

(3) A tank that meets the requirements of [40 CFR Sections R315-265(1)-190 through R315-265-202, except for [40 CFR Subsection R315-265]-197(c) and [40 CFR]-Section R315-265]-200 and 201, 40 CFR 265 is adopted by reference in R315-265]; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:

(1) A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) A large quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers. Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-33(f).

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container; and

(iii) Removing actuators to reduce the risk of accidental release.

(4) A large quantity handler of universal waste may who punctures and drains their [universal waste] aerosol cans [to remove and collect the contents of the aerosol can provided the handler shall recycle...
the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or aerosol can, residues, or glue to the environment; Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof;

(ii) Ensures that the puncturing operations are performed safely; developing and implementing a written procedure detailing how to safely puncture and drain the universal waste aerosol cans, including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specifications and instructions on-site; and ensure employees operating the device are trained in the proper procedures.

This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol can safely;
(B) operation and maintenance of the unit;
(C) segregation of incompatible wastes;
(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and
(E) waste characterization.

(ii) Ensure(s) that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the operation; puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment.

This manner includes locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer[s] the contents of the universal waste aerosol can, or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-34[4]14, R315-262-15, R315-262-16, or R315-262-17[4].

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies. If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.

(d)A large quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can; or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste as defined in Section R315-261-30 through 35, or are listed as a hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-262-34(e)(1) or R315-262-34(e)(2). If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.


A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below in Subsections R315-273-34(a) through R315-273-34(g).

(a) Universal waste batteries, [i.e.], each battery, or a container or tank in which the batteries are contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Battery[es](s)[,]", or "Waste Battery[es](s)[,]", or "Used Battery[es](s)[,]."

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-34(a)(1) are contained shall be labeled or marked clearly with:

(1) [i]f the label that was on or accompanied the product as sold or distributed; and
(2) [i]f the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[,]."

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-34(a)(2) are contained shall be labeled or marked clearly with:

(1) [i]f the label that was on the product when purchased, if still legible;
(2) [i]f the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[,]."

(d) Any Mercury-containing equipment, [i.e.], each device, or a container in which the equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury-Containing Equipment[es][,]", "Waste Mercury-Containing Equipment[es][,]", or "Used Mercury-Containing Equipment[es][,]."

(e) Any universal waste mercury-containing thermostats or containers containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[,]", "Waste Mercury Thermostat(s)[,]", or "Used Mercury Thermostat(s)[,]."

(f) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with:

(1) [i]f the lamp label that was on or accompanied the lamp as sold or distributed;
(2) [i]f the label that was on the lamp when the lamp was sold or distributed; and
(3) [i]f the label that was on or accompanied the product as sold or distributed; and
(4) [i]f the words "Universal Waste-Lamp(s)" or "Waste-Lamp(s)[,]."

(g) A universal waste mercury-containing thermostat or device, or a container in which the equipment is contained, shall be labeled or marked clearly with:

(1) "Universal Waste-Mercury Thermostat(s)[,]", "Waste Mercury Thermostat(s)[,]", or "Used Mercury Thermostat(s)[,]."

(h) A universal waste mercury-containing equipment, [i.e.], each device, or a container in which the equipment is contained, shall be labeled or marked clearly with:

(1) [i]f the label that was on the product when purchased, if still legible;
(2) [i]f the words "Universal Waste-Mercury-Containing Equipment[es][,]", "Waste Mercury-Containing Equipment[es][,]", or "Used Mercury-Containing Equipment[es][,]."

(i) Any universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[,]", "Waste Mercury Thermostat(s)[,]", or "Used Mercury Thermostat(s)[,]."
The purpose of this amendment is to incorporate by reference into this rule the completed Total Maximum Daily Load (TMDL) study for Spring Creek (Heber) for E. coli as approved by the Water Quality Board.

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 section incorporates by reference the completed Spring Creek (Heber) TMDL for E. coli into this rule. This TMDL document was approved by the Water Quality Board on August 25, 2021, to initiate rulemaking to adopt the TMDL.

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 financial savings to the state budget. The proposed amendment will be addressed using existing state resources. The Implementation Plan of the TMDL suggests improvements that may be made on a voluntary basis with local interest and leadership driving the process. The one permitted discharge facility, Jordanelle Special Service District Water Reclamation Facility, will not have stricter discharge limits based on this TMDL. The wasteload allocation is based on existing secondary limits. The Spring Creek (Heber) E. coli TMDL is entirely focused on nonpoint sources. Therefore, none of the recommendations within it are mandated. The Division of Water Quality (DWQ) and other state and federal agencies provide opportunities for cost share incentives for those interested in implementing best management practices, but all are on a voluntary basis and currently in place. The savings will not be monetary but will save in water quality conditions and recreational uses.

B) Local governments:

All estimated costs for implementing this TMDL are associated with strategies that are voluntary and addressed through existing voluntary incentive programs. It is not anticipated that local governments will be affected. Monetary savings to local governments will be minimal, however savings will occur in recreational uses and water quality conditions.

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

All estimated costs for implementing this TMDL are associated with strategies that are voluntary and addressed through existing voluntary incentive programs. It is not anticipated that small businesses will be affected. Monetary savings for small businesses will be minimal; however, savings will occur in recreational uses and water quality conditions.

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


All estimated costs for implementing this TMDL are associated with strategies that are voluntary and addressed through existing voluntary incentive programs. It is not anticipated that non-small businesses will be affected. Monetary savings to non-small businesses will be minimal; however, savings will occur in recreational uses and water quality conditions.

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 study includes general recommendations for voluntary strategies and management options for reducing bacteria loading in the watershed. It does not identify specific projects and locations. As such, no estimated costs for implementation were calculated. Monetary savings to other entities will be minimal; however, savings will occur in recreational uses and water quality conditions.

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

All nonpoint source strategies are voluntary; therefore, compliance costs do not apply. There is one permitted wastewater treatment facility point source that has the potential to discharge to Spring Creek. Their wasteload allocation is set at their existing secondary limits thus they will not incur any fiscal impacts.

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 to businesses and governments are anticipated as a result of the TMDL. Potential strategies and management options for reducing non-point sources of pollutants are identified but are not specifically mandated. This TMDL will not require any fiscal impacts to the wastewater treatment facility either. Development and implementation of this TMDL relies heavily upon stakeholder engagement. DWQ funded a NPS grant to the Wasatch Conservation District to develop a 9 Element watershed plan to implement this TMDL. 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost</th>
<th>FY2022</th>
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<th>FY2024</th>
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</tr>
<tr>
<td>Local Governments</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

| Small Businesses        | $0         | $0     | $0     |
| Non-Small Businesses    | $0         | $0     | $0     |
| Other Persons           | $0         | $0     | $0     |
| Total Fiscal Cost       | $0         | $0     | $0     |

| Fiscal Benefits         | State Government $0 | $0 | $0 |
| Local Governments       | $0 | $0 | $0 |
| Small Businesses        | $0 | $0 | $0 |
| Non-Small Businesses    | $0 | $0 | $0 |
| Other Persons           | $0 | $0 | $0 |
| Total Fiscal Benefits   | $0 | $0 | $0 |

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:

Title 19, Chapter 5

Incorporations by Reference Information

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

<table>
<thead>
<tr>
<th>Official Title of Materials Incorporated (from title page)</th>
<th>First Incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. coli Total Maximum Daily Load (TMDL) for Spring Creek (Heber)</td>
<td>Division of Water Quality</td>
</tr>
</tbody>
</table>

Date Issued

December 15, 2021

Issue, or version

First

Public Notice Information

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

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 12/15/2021

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

Agency head or designee, and title: Erica Gaddis, Director  Date: 09/15/2021

R317-1. Definitions and General Requirements.
R317-1-7. TMDLs.
The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:
7.1 Middle Bear River -- February 23, 2010;
7.2 Chalk Creek -- December 23, 1997;
7.3 Otter Creek -- December 23, 1997;
7.4 Little Bear River -- May 23, 2000;
7.5 Mantua Reservoir -- May 23, 2000;
7.6 East Canyon Creek -- September 14, 2010;
7.7 East Canyon Reservoir -- September 14, 2010;
7.8 Kents Lake -- September 1, 2000;
7.9 LaBaron Reservoir -- September 1, 2000;
7.10 Minersville Reservoir -- September 1, 2000;
7.11 Onion Creek (near Moab) -- July 25, 2002;
7.12 Cottonwood Wash -- September 9, 2002;
7.13 Deer Creek Reservoir -- September 9, 2002;
7.14 Hyrum Reservoir -- September 9, 2002;
7.15 Little Cottonwood Creek -- September 9, 2002;
7.16 Lower Bear River -- September 9, 2002;
7.17 Malad River -- September 9, 2002;
7.18 Mill Creek (near Moab) -- September 9, 2002;
7.19 Spring Creek -- September 9, 2002;
7.20 Forsyth Reservoir -- September 9, 2002;
7.21 Johnson Valley Reservoir -- September 27, 2002;
7.22 Lower Fremont River -- September 27, 2002;
7.23 Mill Meadow Reservoir -- September 27, 2002;
7.24 UM Creek -- September 27, 2002;
7.25 Upper Fremont River -- September 27, 2002;
7.26 Deep Creek -- October 9, 2002;
7.27 Uinta River -- October 9, 2002;
7.28 Pineview Reservoir -- December 9, 2002;
7.29 Browne Lake -- February 19, 2003;
7.30 San Pitch River -- November 18, 2003;
7.31 Newton Creek -- June 24, 2004;
7.32 Panguitch Lake -- June 24, 2004;
7.33 West Colorado -- August 4, 2004;
7.34 Silver Creek -- August 4, 2004;
7.35 Upper Sevier River -- August 4, 2004;
7.36 Lower and Middle Sevier River -- August 17, 2004;
7.37 Lower Colorado River -- September 20, 2004;
7.38 Upper Bear River -- August 4, 2006;
7.39 Echo Creek -- August 4, 2006;
7.40 Soldier Creek -- August 4, 2006;
7.41 East Fork Sevier River -- August 4, 2006;
7.42 Koosharem Reservoir -- August 4, 2006;
7.43 Lower Box Creek Reservoir -- August 4, 2006;
7.44 Otter Creek Reservoir -- August 4, 2006;
7.45 Thistle Creek -- July 9, 2007;
7.46 Strawberry Reservoir -- July 9, 2007;
7.47 Matt Warner Reservoir -- July 9, 2007;
7.48 Calder Reservoir -- July 9, 2007;
7.49 Lower Duchesne River -- July 9, 2007;
7.50 Lake Fork River -- July 9, 2007;
7.51 Brough Reservoir -- August 22, 2008;
7.52 Steinaker Reservoir -- August 22, 2008;
7.53 Red Fleet Reservoir -- August 22, 2008;
7.54 Newcastle Reservoir -- August 22, 2008;
7.55 Cutler Reservoir -- February 23, 2010;
7.56 Emigration Creek -- September 1, 2011;
7.57 Jordan River -- June 27, 2012;
7.58 Parriette Draw -- September 28, 2010;
7.59 Colorado River -- December 5, 2013;
7.60 Echo Reservoir -- March 26, 2014;
7.61 Rockport Reservoir -- March 26, 2014;
7.62 Nine Mile Creek -- October 27, 2016;
7.63 North Fork Virgin River -- May 23, 2018;
7.64 Fremont River -- October 28, 2020; and
7.65 Spring Creek (Heber) -- December 15, 2021.

KEY: TMDL, water pollution
Date of Last Change: [October 30, 2020]2021
Notice of Continuation: August 30, 2017
Authorizing, and Implemented or Interpreted Law: 19-5

NOTICE OF PROPOSED RULE

TYPE OF RULE: New
Utah Admin. Code R354-1  Ref (R no.): Filing ID 53861

Agency Information

1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Danny Schoenfeld  Phone: 801-557-6260  Email: dschoenfeld@utah.gov
Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the purchasing process as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):
I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Cost</td>
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<td>Local Governments</td>
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<td>Non-Small Businesses</td>
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<td>Other Persons</td>
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<td>Total Fiscal Cost</td>
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Fiscal Benefits

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</tr>
</tbody>
</table>

B) Department head approval of regulatory impact analysis:
The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021
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
Agency head or designee, and title: Danny Schoenfeld, Managing Director Date: 08/26/2021

R354. Governor, Colorado River Authority of Utah.
R354-1-101. Title.
This policy is adopted by the Colorado River Authority of Utah ("CRAU") and is known as the "General Procurement Provisions."

R354-1-102. Purpose of Policy.
The underlying purposes of this Procurement Procedure under Rules R354-1 through R354-15 are:
(1) to comply with the Subsection 63M-14-206(1) requirement that the CRAU adopt a "Procurement procedure substantially similar to Title I, Chapter 6a, Utah Procurement Code" while recognizing that:
(a) it is not "an executive branch Procurement unit" and "is not subject to" to the state Procurement code;
(b) the CRAU will not be involved in construction of facilities or infrastructure projects and consequently, many of the state law provisions are inapplicable; and
(c) the Executive Director has independent power under Section 63M-14-402 to employ consultants, professionals, and legal counsel with the consent of the attorney general;
(2) to ensure transparency in the Procurement process;
(3) to ensure the fair and equitable treatment of persons who participate in the Procurement process;
(4) to provide increased economy in Procurement activities; and (5) to foster effective broad-based competition within the free enterprise system.

R354-1-103. Definitions.
As used in this title:
(1) "Authority" means the Colorado River
(2) "Bidder" means a person who submits a bid or price quote in response to an Invitation for Bids
(3) "Bidding Process" means the Procurement process described in this the Procurement Procedure under Section R354-1-102.
(4) "Contract" means an agreement for a Procurement.
(5) "Contract Administration" means any function, duty, and responsibility associated with managing, overseeing, and carrying out a Contract between the CRAU and a Contractor, including:
(a) implementing the Contract;
(b) ensuring compliance with the Contract terms and conditions by the CRAU and the Contractor;
(c) processing Contract amendments;
(d) resolving, to the extent practicable, Contract disputes;
(e) curing Contract errors and deficiencies;
(f) terminating a Contract;
(g) measuring or evaluating completed work and Contractor performance;
(h) computing payments under the Contract; and
(i) closing out a Contract.
(6) "Contractor" means a person who is awarded a Contract with the CRAU.
(7) "Cooperative Procurement" means a Procurement made pursuant to R354-14.
(8) "Days" means calendar days, unless expressly provided otherwise.
(9) "Definite Quantity Contract" means a Fixed Price Contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
(10) "Executive Director" means the executive director of the CRAU.
(11) "Fixed Price Contract" means a Contract that provides a price, for each Procurement Item obtained under the Contract, that is not subject to adjustment except to the extent that:
(a) the Contract provides, under circumstances specified in the Contract, for an adjustment in price that is not based on cost to the Contractor; or
(b) an adjustment is required by law.
(12) "Fixed Price Contract with Price Adjustment" means a Fixed Price Contract that provides for an upward or downward revision of price, precisely described in the Contract, that:
(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
(b) is not based on a percentage of the cost to the Contractor.
(13) "Grant" means an expenditure of Public Funds or other assistance, or an agreement to expend Public Funds or other assistance, for a public purpose authorized by law, without acquiring a Procurement Item in exchange.
(14) "Immaterial Error":
(a) means an irregularity or abnormality that is:
(i) a matter of form that does not affect substance; or
(ii) an inconsequential variation from a requirement of a Solicitation that has no, little, or a trivial effect on the Procurement process and that is not prejudicial to other Vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the Solicitation; and

(iv) any other error that the Procurement Official reasonably considers to be immaterial.

(15) "Indefinite Quantity Contract" means a Fixed Price Contract that:

(a) is for an indefinite amount of Procurement Items to be supplied as ordered by the CRAU; and

(b) does not require a minimum purchase amount; or

(i) provides a maximum purchase limit.

(16) "Invitation for Bids":

(a) means a document used to solicit:

(i) bids to provide a Procurement Item to the CRAU; or

(ii) quotes for a price of a Procurement Item to be provided to the CRAU; and

(b) includes any document attached to or incorporated by reference in a document described in Subsection (16)(a).

(17) "Multiple Award Contract" means the award of a Contract for an Indefinite Quantity of a Procurement Item to more than one person.

(18) "Multiyear Contract" means a Contract that extends beyond a one-year period, including a Contract that permits renewal of the Contract, without competition, beyond the first year of the Contract.

(19) "Offeror" means a person who submits a proposal in response to a Request for Proposals.

(20) "Procurement" means the acquisition of a Procurement Item through an expenditure of Public Funds, or an agreement to expend Public Funds.

(21) "Procurement Item" means an item of personal property, a Technology, or a service.

(22) "Procurement Official" means the Executive Director or the Executive Director's designee.

(23) "Professional Service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:

(a) accounting;

(b) financial services;

(c) Technology;

(d) the law; or

(e) underwriting.

(24) "Public Funds" means money, regardless of its source, including from the federal government, that is owned or held by the CRAU.

(25) "Request for Proposals" means a document used to solicit proposals to provide a Procurement Item to the CRAU, including any other document that is attached to that document or incorporated in that document by reference.

(26) "Request for Proposals Process" means the Procurement process described in R354, Request for Proposals.

(27) "Requirements Contract" means a Contract under which a Contractor agrees to provide the CRAU's entire requirements for certain Procurement Items at prices specified in the Contract during the Contract period; and that:

(a) does not require a minimum purchase amount; or

(b) provides a maximum purchase limit.

(28) "Responsible" means being capable, in any respect, of:

(a) meeting each requirement of a Solicitation; and

(b) fully performing all the requirements of the Contract resulting from the Solicitation, including being financially solvent with sufficient financial resources to perform the Contract.

(29) "Responsive" means conforming in each material respect to the requirements of a Solicitation.

(30) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to the CRAU;

(b) includes a Professional Service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(31) "Small Purchase Process" means the Procurement process described in Rule R354-2.

(32) "Sole Source Contract" means a Contract resulting from a Sole Source Procurement.

(33) "Sole Source Procurement" means a Procurement without competition pursuant to a determination that there is only one source for the Procurement Item.

(34) "Solicitation" means an Invitation for Bids or Request for Proposals.

(35) "Solicitation Response" means:

(a) a bid submitted in response to an Invitation for Bids; or

(b) a proposal submitted in response to a Request for Proposals.

(36) "Specification" means any description of the physical or functional characteristics or of the nature of a Procurement Item included in an Invitation for Bids or a Request for Proposals, or otherwise specified or agreed to by the CRAU, including a description of:

(a) a requirement for inspecting or testing a Procurement Item; or

(b) preparing a Procurement Item for delivery.

(37) "Standard Procurement Process" means:

(a) the Bidding Process;

(b) the Request for Proposals Process;

(c) the Small Purchase Process; or

(d) the Professional Services Procurement process.

(38) "Subcontractor":

(a) means a person under Contract to perform part of a contractual obligation under the control of the Contractor, whether the person's Contract is with the Contractor directly or with another person who is under Contract to perform part of a contractual obligation under the control of the Contractor; and

(b) includes a supplier, distributor, or other Vendor that furnishes supplies or services to a Contractor.

(39) "Technology" means the same as "information technology," as defined in Section 63A-16-102.

(40) "Tie Bid" means that the lowest Responsive bids of Responsible Bidders are identical in price.

(41) "Time and Materials Contract" means a Contract under which the Contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the Contract, to cover overhead and profit, that is not based on a percentage of the cost to the Contractor.

(42) "Transitional Costs":

NOTICES OF PROPOSED RULES
(a) means the costs of changing:
   (i) from an existing provider of a Procurement Item to another provider of that Procurement Item; or
   (ii) from an existing type of Procurement Item to another type;
(b) includes:
   (i) training costs;
   (ii) conversion costs;
   (iii) compatibility costs;
   (iv) costs associated with system downtime;
   (v) disruption of service costs;
   (vi) staff time necessary to implement the change;
   (vii) installation costs; and
   (viii) ancillary software, hardware, equipment, or construction costs; and
(c) does not include:
   (i) the costs of preparing for or engaging in a Procurement process;
   (ii) Contract negotiation or drafting costs.
   (43) "Vendor":
   (a) means a person who is seeking to enter into a Contract with the CRAU to provide a Procurement Item; and
   (b) includes:
      (i) a Bidder; and
      (ii) an Offeror.

R354-1-104. Purpose of Specifications.
(1) Each Specification shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the CRAU and may not be unduly restrictive.
(2) The requirements of this rule regarding the purposes and non-restrictiveness of Specifications shall apply to each Specification, including those prepared by Professional Service providers and drafters for public Contracts.

(1) When the CRAU issues a Solicitation, it shall post notice of the Solicitation:
   (a) at least seven days before the day of the deadline for submission of a Solicitation Response; and
   (b)(i) on the main website for the CRAU; or
   (ii) on a state website that is owned, managed by, or provided under Contract with the state for posting a public Procurement notice.
(2) The Procurement Official may reduce the seven-day period described in Subsection (1) if the Procurement Official signs a written statement that:
   (a) states that a shorter time is needed; and
   (b) determines that competition from multiple sources may be obtained within the shorter period.
(3)(a) It is the responsibility of a person seeking information provided by a notice published under this section to seek out, find, and respond to the notice.
   (b) As a courtesy and to promote competition, the CRAU may provide but is not required to provide individual notice.

R354-1-106. Price Based on Established Terms.
When the CRAU is acquiring a Procurement Item it may establish the price of the Procurement Item based on a price list, rate schedule, or price catalog:
(1) submitted by a Vendor and accepted by CRAU; or
(2) mandated by the CRAU or a federal agency.

(1) The Procurement Official may allow a Vendor to correct an Immaterial Error in a Responsive Solicitation Response as provided in this section.
   (2)(a) The CRAU that allows a Vendor to correct an Immaterial Error in a Responsive Solicitation Response shall:
      (i) require the Vendor to submit the correction in writing; and
      (ii) establish a deadline by which the Vendor is required to correct the Immaterial Error.
   (b) The CRAU may not allow a Vendor to correct an Immaterial Error in a Responsive Solicitation Response after the deadline established under Subsection (2)(a).

(1) The Procurement Official may at any time make a written request to a Vendor to:
   (a) clarify information contained in a Responsive Solicitation Response; or
   (b) provide additional information that the Procurement Official determines the Procurement Official needs to determine whether the Vendor is Responsible.
   (2)(a) The Procurement Official that requests a Vendor to clarify or provide additional information under this section shall establish a deadline by which the Vendor is required to submit the clarifying or additional information.
   (b) The CRAU may not allow a Vendor to submit clarifying or additional information after the deadline established under Subsection (2)(a).

(1) As used in this section:
   (a) "Buyback purchaser" means a person who buys a Procurement Item from the CRAU to which the person previously sold the Procurement Item.
   (b) "Excess repurchase amount" means the difference between:
      (i) the amount a buyback purchaser pays to the CRAU to purchase a Procurement Item that the buyback purchaser previously sold to the CRAU; and
      (ii) the amount the CRAU paid to the buyback purchaser to purchase the Procurement Item.
   (2) The CRAU that sells a Procurement Item to a buyback purchaser for an amount that exceeds the amount the CRAU paid for the Procurement Item:
      (a) shall require the buyback purchaser to pay cash for the Procurement Item;
      (b) may not accept the excess repurchase amount in the form of a credit, discount, or other incentive on a future purchase that the CRAU makes from the buyback purchaser; and
      (c) may not use the excess repurchase amount to acquire an additional Procurement Item from the person who paid the excess repurchase amount.

R354-1-110. Cancelling a Solicitation.
(1) The CRAU may cancel a Solicitation if the Procurement Official determines that cancellation is in the best interests of the CRAU.
(2) If the CRAU cancels a Solicitation:
   (a) the Procurement Official shall explain in writing the reasons for the cancellation; and
   (b) the CRAU shall make the written explanation described in Subsection (2)(a) available to the public for a period of one year after the cancellation.

R354-1-111. Rejecting a Solicitation Response.
   (1) The CRAU may reject a Solicitation Response if:
      (a) the Solicitation Response:
         (i) is not Responsive;
         (ii) violates a requirement of the Solicitation; or is not submitted before the deadline specified in the Solicitation;
      (b) the Vendor who submitted the Solicitation Response:
         (i) is not Responsible;
         (ii) is in violation of a provision of this Procurement Procedure;
         (iii) has had a previous Contract with the CRAU cancelled;
         (iv) has engaged in unethical conduct;
         (v) is subject to an outstanding tax lien; or
         (vi) fails to sign a Contract awarded because of the Solicitation Response within:
            (A) 90 days after the Contract award if the Solicitation does not specify a deadline for the signing of the Contract; or
            (B) the time specified in the Solicitation if the Solicitation specifies a deadline for the signing of the Contract; or
      (c) after the Vendor submits a Solicitation Response there is a change in the Vendor's circumstances that, if known at the time the Solicitation Response was submitted, would have caused the CRAU to reject the Solicitation Response.
   (2) When the Procurement Official rejects a Solicitation Response under Subsection (1), the Procurement Official shall provide the Vendor who submitted the rejected Solicitation Response a written statement of the reasons for the rejection.

KEY: Colorado, procurement, process
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206
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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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<tr>
<td>Total Fiscal Cost</td>
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<td>$0</td>
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</table>

Fiscal Benefits

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

B) Department head approval of regulatory impact analysis:
The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 | 63M-14-206 |

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director | Date: | 08/26/2021 |

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R354. Governor, Colorado River Authority of Utah.
R354-2-101. Title.

This rule is known as "Small and Professional Services."


(1) Terms used in this rule are defined in Section R354-1-102, with the addition of:

(a) "Annual cumulative threshold" means the maximum total annual amount, established under Subsection (2), that the CRAU may expend to obtain Procurement Items from the same source under this rule.

(b) "Individual Procurement threshold" means the maximum amount, established under Subsection (2), for which the CRAU may purchase a Procurement Item under this rule.

(c) "Single Procurement aggregate threshold" means the maximum total amount, established under Subsection (2), that the CRAU may expend to obtain multiple Procurement Items from one source at one time under this rule.

(d) "Small Purchase" means a purchase of any Procurement Item under this rule other than a Professional Services purchase.

(2)(a) The Small Purchase Annual Cumulative Threshold is $200,000, the Individual Procurement Threshold is $50,000, and the Single Procurement Aggregate Threshold is $100,000.

(b) Small Purchases made under this rule may not exceed a threshold, unless the Procurement Official gives written
authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(1) The Procurement Official may procure a Small Purchase or a Professional Purchase without a formal Solicitation but nothing herein prohibits the Procurement Official from choosing to go through a formal Solicitation.
(2) For a Professional Purchase, the Procurement Official shall negotiate Contracts:
   (a) based on demonstrated competence and qualification for the Professional Service required; and
   (b) at fair and reasonable prices.

R354-2-104. Division Prohibited.
(1) Except as otherwise expressly provided in this rule, the Procurement Official:
   (a) may not use the Small Purchase Procurement Process, described in this rule, for ongoing, continuous, and regularly scheduled Procurements that exceed the Annual Cumulative Threshold; and
   (b) shall make its ongoing, continuous, and regularly scheduled Procurements that exceed the Annual Cumulative Threshold through a Contract awarded through another Standard Procurement Process or an applicable exception to another Standard Procurement Process, described in this Procurement Procedure.
(2) This rule does not prohibit regularly scheduled payments for a Procurement Item obtained under another provision of this Procurement Procedure.
(3)(a) It is prohibited for the Procurement Official to divide a single Procurement into multiple smaller Procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders if:
   (i) the single Procurement would not have qualified as a Small Purchase under this rule;
   (ii) one or more of the multiple smaller Procurements qualify as a Small Purchase under this rule; and
   (iii) the division is done with the intent to:
      (A) avoid having to use a Standard Procurement Process, other than the Small Purchase Process, that the person would otherwise be required to use for the single Procurement; or
      (B) make one or more of the multiple smaller Procurements fall below a Small Purchase expenditure threshold under this rule that the single Procurement would not have fallen below without the division.
   (b) A violation of Subsection (3)(a) is subject to penalties as provided in Subsection R354-15-104(4).

KEY: Colorado, small, professional
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206
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 other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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Fiscal Benefits

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B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Danny Schoenfeld, Managing Director Date: 08/26/2021

R354. Governor, Colorado River Authority of Utah.
R354-3-101. Title.
This rule is known as "Bidding."

R354-3-102. Contracts Awarded by Bidding.
The Procurement Official may award a Contract for a Procurement Item through this Bidding Process.

R354-3-103. Invitation for Bids -- Requirements -- Publication.
(1) If the CRAU intends to award a Contract for a Procurement Item using the CRAU Bidding Process shall issue an Invitation for Bids.
(2) The CRAU shall include in an Invitation for Bids:
NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R354-4 Filing ID 53864

Agency Information
1. Department: Governor
   Agency: Colorado River Authority of Utah

Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111
Contact person(s):
Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@utah.gov

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

General Information
2. Rule or section catchline:
R354-4. Request for Proposals

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
   Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the request for proposals as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
   A) State budget:
      There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.
   B) Local governments:
      There is no anticipated cost or savings to local governments. This rule does not apply to local governments.
   C) Small businesses ("small business" means a business employing 1-49 persons):
      There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.
   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. This rule does not apply to non-small businesses.

KEY: Colorado, Bidding Process
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206
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 other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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Fiscal Benefits

| Fiscal Benefits         |         |         |         |
| State Government        | $0       | $0     | $0     |
| Local Governments       | $0       | $0     | $0     |
| Small Businesses        | $0       | $0     | $0     |
| Non-Small Businesses    | $0       | $0     | $0     |
| Other Persons           | $0       | $0     | $0     |

Total Fiscal Benefits

| Total Fiscal Benefits | $0 | $0 | $0 |

Net Fiscal Benefits

| Net Fiscal Benefits | $0 | $0 | $0 |

B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director | Date: 08/26/2021 |

R354. Governor, Colorado River Authority of Utah.
R354-4. Request for Proposals.
R354-4-101. Title.
This rule is known as "Request for Proposals."

R354-4-102. Contracts Awarded by Request for Proposals.
The CRAU may award a Contract for a Procurement Item through this Request for Proposals Process in accordance with the rules.

R354-4-103. Request for Proposals Requirements - Publication of Request.
(1) In awarding a contract for a procurement item using the request for proposal the CRAU shall issue a Contract for a
R354-4-103. Evaluation Committee -- Evaluation of Proposals.

(1) The Procurement Official shall:
   (a) appoint evaluation committee members who have at least a general familiarity with or basic understanding of:
       (i) the technical requirements relating to the type of Procurement Item that is the subject of the Procurement; or
       (ii) the need that the Procurement Item is intended to address; and
   (b) ensure that the evaluation committee and each individual participating in the evaluation committee process:
       (i) does not have a conflict of interest with any of the Offerors;
       (ii) can fairly evaluate each proposal;
       (iii) does not contact or communicate with an Offeror concerning the Procurement outside the official evaluation committee process; and
       (iv) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(2) A person who submits a proposal may not, after the deadline for submitting proposals, if the addendum does not change the Request for Proposals, submit a proposal based on the criteria stated in the Request for Proposals; and the evaluation committee shall prepare and submit to the CRAU a written statement that:
   (a) recommends a proposal for an award of a Contract, if the evaluation committee decides to recommend a proposal;
   (b) contains the score awarded to the recommended proposal based on the criteria stated in the Request for Proposals; and
   (c) explains how the recommended proposal provides the best value to the CRAU.

(3) The CRAU shall publish a Request for Proposals as determined by the Procurement Official in accordance R354-1-105.

R354-4-104. Processing of Proposals - Changes to Proposals Not Allowed.

(1) The CRAU:
   (a) shall accept proposals as provided in the Request for Proposals;
   (b) may not open a proposal until after the deadline for submitting proposals; and
   (c) may not disclose the contents of a proposal to the public or to another Offeror.

(2) A person who submits a proposal may not, after the deadline for submitting proposals, make a change to the proposal if the change is prejudicial to:
   (a) the interest of the CRAU; or
   (b) fair competition.

R354-4-105. Limited Addenda to Requests for Proposals.

After the deadline for submitting proposals, the CRAU may, at the discretion of the Procurement Official, issue a Request for Proposals addendum that has limited application only to Offerors that have submitted proposals, if the addendum does not change the Request for Proposals in a way that, in the opinion of the Procurement Official, would likely have affected the number of proposals submitted in response to the Request for Proposals had the addendum been included in the original Request for Proposals.

R354-4-106. Discussions with a Person who Submits a Proposal.

(1) The CRAU may have discussions with an Offeror to obtain a more complete understanding of whether the Offeror is Responsible, or the Offeror's proposal is Responsive.

(2) The CRAU may reject a proposal following discussions under Subsection (1) if the CRAU determines that the offeror is not responsible or the proposal is not responsive.


(1) The Procurement Official shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a Request for Proposals issued by the CRAU.

(2) The evaluation committee shall evaluate proposals in accordance with the process described in the Request for Proposals.

(3) To determine which proposal provides the best value to the CRAU, the evaluation committee shall evaluate each Responsible Offeror's Responsive proposal that has not been disqualified from consideration under the provisions of this R354-4-103, using the evaluation criteria described in the Request for Proposals.

(4) Criteria not described in the Request for Proposals may not be used to evaluate a proposal.

(5) The Procurement Official shall:
   (a) notify the evaluation committee members that they shall be prohibited from knowing or having access to information relating to the cost of a proposal until the evaluation committee submits its recommendation to the CRAU based on the scores of any criteria other than cost; and
   (b) notify the evaluation committee members that they shall not notify or communicate with an Offeror concerning the Procurement outside the official evaluation committee process; and
   (c) provide the evaluation committee with all information necessary to evaluate the proposals.

(6) The CRAU may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the Procurement.

(7)(a) Except as provided in Subsection (7)(b), an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the CRAU based on the scores of any criteria other than cost.

(b) A Procurement Official may waive the prohibition of Subsection (7)(a) by signing a written statement indicating why waiving the prohibition is in the best interests of the CRAU.

(8) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the CRAU.

(9)(a) The deliberations and other proceedings of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations and other proceedings.

(10)(a) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the CRAU a written statement that:
   (i) recommends a proposal for an award of a Contract, if the evaluation committee decides to recommend a proposal;
   (ii) contains the score awarded to the recommended proposal based on the criteria stated in the Request for Proposals; and
   (iii) explains how the recommended proposal provides the best value to the CRAU.

(b) The CRAU is not required to comply with Subsection (10)(a) for a Contract with a construction manager or general contractor if the Contract is awarded based solely on:
   (i) the qualifications of the construction manager or general contractor; and
   (ii) the management fee to be paid to the construction manager or general contractor.

R354-4-108. Best and Final Offers.

(1) The best and final offer process described in this section:
   (a) may be used only in a Request for Proposals Process, whether the Request for Proposals Process is used independently or after the establishment of an approved Vendor list through the approved Vendor list process; and
   (b) can be used only in a Request for Proposals Process, whether the Request for Proposals Process is used independently or after the establishment of an approved Vendor list through the approved Vendor list process; and
(b) may not be used in any other Standard Procurement Process, whether the other Standard Procurement Process is used independently or after the establishment of an approved Vendor list through the approved Vendor list process.

(2) Subject to Subsection (3), a conducting Procurement unit may request best and final offers from Responsible Offerors:
(a) only with the approval of the Procurement Official; and
(b) if:
   (i) no single proposal adequately addresses any of the Specifications stated in the Request for Proposals;
   (ii) any proposals are unclear or deficient in one or more respects;
   (iii) any cost proposals exceed the identified budget or the CRAU’s available funding; or
   (iv) two or more proposals receive an identical evaluation score that is the highest score.

(3) A conducting Procurement unit may request a best and final offer from, and a best and final offer may be submitted to the conducting Procurement unit by, only a Responsible Offeror that has submitted a Responsive proposal that meets the minimum mandatory criteria stated in the Request for Proposals required to be considered in the stage of the Procurement process at which best and final offers are being requested.

(4) The best and final offer process may not be used to change:
(a) a determination that an Offeror is not Responsible to a determination that the Offeror is Responsible; or
(b) a determination that a proposal is not Responsive to a determination that the proposal is Responsive.

(5) This Subsection (5) applies if a request for best and final offers is issued because any cost proposal exceeds the identified budget or the CRAU’s available funding.

(b)(i) The conducting Procurement unit may, in the request for best and final offers:
(A) specify the scope of work reductions the CRAU is making to generate proposals that are within the identified budget or the CRAU's available funding; or
(B) invite Offerors submitting best and final offers to specify the scope of work reductions being made so that the reduced cost proposal is within the identified budget or the CRAU's available funding.

(ii) The conducting Procurement unit is not required to accept a scope of work reduction that an Offeror has specified in the Offeror's best and final offer.

(c) A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the Offeror's proposed scope of work that correspond to the Offeror's reduced cost proposal.

(d) A reduction in the scope of work may not:
   (i) eliminate a component identified in the Request for Proposals as a minimum mandatory requirement; or
   (ii) alter the nature of the original Request for Proposals to the extent that a Request for Proposals for the reduced scope of work would have likely attracted a significantly different set of Offerors submitting proposals in response to the Request for Proposals.

(6) If a request for best and final offers is issued because two or more proposals received an identical evaluation score that is the highest score:
(a) the request may be issued only to Offerors who submitted a proposal receiving the highest score; and
(b) an Offeror submitting a best and final offer may revise:
   (i) the technical aspects of the Offeror's proposal;
   (ii) the Offeror's cost proposal, as provided in Subsection (5); or
   (iii) both the technical aspects of the Offeror's proposal and, as provided in Subsection (5), the Offeror's cost proposal.

(7) In a request for best and final offers, the conducting Procurement unit shall:
(a) clearly specify:
   (i) the issues that the CRAU requests the Offerors to address in their best and final offers; and
   (ii) how best and final offers will be evaluated and scored in accordance with Section R354-4-108;
   (b) establish a deadline for an Offeror to submit a best and final offer; and
   (c) if applicable, establish a schedule and procedure for conducting discussions with Offerors concerning the best and final offers.

(8) In conducting a best and final offer process under this section, a conducting Procurement unit shall:
(a) maintain confidential the information the CRAU receives from an Offeror, including any cost information, until a Contract has been awarded or the Request for Proposals cancelled; and
(b) ensure that each Offeror receives fair and equal treatment; and
(c) safeguard the integrity of the scope of the original Request for Proposals, except as specifically provided otherwise in this section.

(9) In a best and final offer, an Offeror:
(a) may address only the issues described in the request for best and final offers; and
(b) may not correct a material error or deficiency in the Offeror's proposal or address any issue not described in the request for best and final offers.

(10) If an Offeror fails to submit a best and final offer, the conducting Procurement unit shall treat the Offeror's original proposal as the Offeror's best and final offer.

(11) After the deadline for submitting best and final offers has passed, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the Request for Proposals.

(12) An Offeror may not make and a conducting Procurement unit may not consider a best and final offer that the conducting Procurement unit has not requested under this section.

(13) To implement the best and final offer process described in this section, a rulemaking authority may make rules consistent with this section and the other provisions of this rule.

KEY: Colorado, request, proposal

Date of Last Change: 2021

Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R354-5 Filing ID 53865

Agency Information

1. Department: Governor

Agency: Colorado River Authority of Utah
Room no.: Suite 350
NOTICES OF PROPOSED RULES

General Information

2. Rule or section catchline:
R354-5. Procurement Requirements

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the procurement requirements as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):
I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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(1) The CRAU may award a Contract for a Procurement Item without engaging in a Standard Procurement Process if the Procurement Official determines in writing that:

(a) there is only one source for the Procurement Item; and
(b)(i) Transitional Costs are a significant consideration in selecting a Procurement Item; and

(ii) the results of a cost-benefit analysis demonstrate that Transitional Costs are unreasonable or cost-prohibitive, and that the award of a Contract without engaging in a Standard Procurement Process is in the best interest of the CRAU;

(2)(a) Subject to Subsection (2)(b), the Procurement Official shall cause a publication of notice of the Procurement if the cost of the Procurement exceeds $50,000.

(b) Publication of the notice described in this Subsection (2)(b) is not required for:

(i) the Procurement of public utility services pursuant to a Sole Source Contract; or
(ii) other Procurements under this section for which an applicable rule provides that notice is not required.

(3) A Procurement Official who awards a Contract under this section shall negotiate with the Contractor to ensure that the terms of the Contract, including price and delivery, are in the best interest of the CRAU.

R354-5-104. Emergency Procurement.

(1) As used in this section, "natural disaster" means an event where:

(a) one or more of the following has caused widespread damage:

(i) one or more of the following has caused widespread damage:
(i) an explosion;
(ii) fire;
(iii) a flood;
(iv) a storm;
(v) a tornado;
(vi) winds;
(vii) an earthquake;
(viii) lightning; or
(ix) other adverse weather event; and
(b) the president of the United States has declared an emergency or major disaster in the state, or the governor has declared a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

(2) Notwithstanding any other provision of this R354-5 and subject to Subsection (4), a Procurement Official may authorize the CRAU to engage in an emergency Procurement without using a Standard Procurement Process if the Procurement is necessary to:
(a) avoid a lapse in a critical government service;
(b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including a natural disaster; or
(c) protect the legal interests of a public entity.

(3) The CRAU conducting an emergency Procurement under Subsection (2) shall:
(a) ensure that the Procurement is made with as much competition as reasonably practicable while:
   (i) avoiding a lapse in a critical government service;
   (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
   (iii) protecting the legal interests of a public entity; and
(b) make the following publicly available on the CRAU’s website within 14 days of the emergency Procurement:
   (i) a written document describing the specific emergency that necessitated the emergency Procurement;
   (ii) the name of the highest ranking government official that approved the emergency Procurement; and
   (iii) each written Contract related to the emergency Procurement.

(4)(a) Except as provided in Subsections (4)(b), (5), and (6), the term of a Contract entered into for an emergency Procurement under this section may be no longer than 30 days.

(b) The term of a Contract entered into for an emergency Procurement under this section related to a natural disaster may be no longer than 60 days.

(5)(a) Subject to Subsection (5)(b), the requirements described in Subsection (4) do not apply to an emergency Procurement for legal services.

(b) A person hired through an emergency Procurement to provide legal services may not, under the Contract entered through the emergency Procurement, hire or otherwise provide remuneration to a consultant for services related to any topic that is not directly related to the legal services for which the person was hired.

(6) The requirements described in Subsection (4) do not apply to an emergency Procurement by the Department of Human Services related to the:
(a) placement of a client with a residential service provider; or
(b) provision of medical services for a client.

KEY: Colorado, procurement requirements
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE

Type of Rule: New

Ref (R no.): R354-6

Filing ID 53866

Agency Information
1. Department: Governor
2. Agency: Colorado River Authority of Utah
3. Room no.: Suite 350
4. Street address: 60 E South Temple
5. City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@utah.gov

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

General Information
2. Rule or section catchline:
R354-6. Cancellations, Rejections, and Debarments

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the procurement requirements as it relates specifically to the Colorado River Authority of Utah.

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

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

There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on:

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

<table>
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<tr>
<th>Agency head or designee, and title:</th>
<th>Danny Schoenfeld, Managing Director</th>
</tr>
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R354. Governor, Colorado River Authority of Utah.

R354-6. Cancellations, Rejections, and Debarment.

R354-6-101. Title.
This rule is known as "Cancellations, Rejections, and Debarment."

R354-6-102. Cancellation and Rejection of Bids and Proposals.
(1) An issuing Procurement unit may cancel an Invitation for Bids, a Request for Proposals, or other Solicitation or reject any bids or proposal responses, in whole or in part, as may be specified in the Solicitation, when it is in the best interests of the CRAU in accordance with the rules of the rulemaking authority.

(2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the Contract file.

R354-6-103. Determination of Non-responsibility.
(1) A determination of non-responsibility of a person made by an issuing Procurement unit shall be made in writing, in accordance with the rules of the rulemaking authority.

(2) A person's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the person.

(3) Subject to Title 63G-1, Chapter 2, Government Records Access and Management Act, information furnished by a person pursuant to this section may not be disclosed outside of the CRAU without the person's prior written consent.

R354-6-104. Debarment or Suspension from Consideration for Award of Contracts - Process - Causes for Debarment Judicial Review.
(1)(a) Subject to Subsection (1)(b), a Procurement Official may:
(i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or
(ii) suspend a person from consideration for award of contracts if there is cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), a Procurement Official shall:
(i) consult with:
(A) the CRAU's Board Chair and Executive Director; and
(B) the attorney general or approved outside counsel;
(ii) give the person at least 10 days' prior written notice of:
(A) the reasons for which debarment or suspension is being considered; and
(B) the hearing under Subsection (1)(b)(iii); and
(iii) hold an informal hearing in accordance with Subsection (1)(c).

(c) At an informal hearing under Subsection (1)(b)(iii), a Procurement Official may:
(A) subpoena witnesses and compel their attendance at the hearing;
(B) subpoena documents for production at the hearing;
(C) obtain additional information; and
(D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the CRAU, or others to assist the Procurement Official to decide on the proposed debarment or suspension.

(ii) The Rules of Evidence do not apply to an informal hearing under Subsection (1)(b)(iii).

(A) A Procurement Official shall:
(B) preserve any records and other evidence relied upon in reaching a decision until the decision becomes final.

(iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the Procurement Official to hold a hearing or issue a decision.

(v) The Procurement Official shall:
(A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and
(B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.

(vi) A written decision under Subsection (1)(c)(v) shall:
(A) state the reasons for the debarment or suspension, if debarment or suspension is ordered; and
(B) inform the person who is debarred or suspended of the right to judicial review as provided in this chapter.

(vii) A decision of debarment or suspension is final and conclusive unless the decision is overturned by a court under Subsection (4).

(2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general or approved outside counsel, remain in effect until after the trial of the suspended person.

(3) The causes for debarment include the following:
(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract or in the performance of a public or private Contract or subcontract;
(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Contractor for the CRAU;
(c) conviction under state or federal antitrust statutes;
(d) failure without good cause to perform in accordance with the terms of the Contract;
(e) a violation of this rule; or
(f) any other cause that the Procurement Official determines to be so serious and compelling as to affect responsibility as a Contractor for the CRAU, including debarment by another governmental entity.

(4)(a) A person who is debarred or suspended under this section may seek judicial review of the debarment or suspension by filing a petition for judicial review in district court.

(b) A petition under Subsection (4)(a):
(i) is a complaint governed by the Utah Rules of Civil Procedure;
(ii) shall name the CRAU as respondent;
(iii) shall be accompanied by a copy of the written decision as to which judicial review is sought; and
(iv) is barred unless filed in district court within 30 days after the date of the issuance of the written decision of suspension or debarment under Subsection (1)(c)(v).

(c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

NOTICES OF PROPOSED RULES

UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19

139
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the preferences as it relates specifically to the Colorado River Authority of Utah.

### Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

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

There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

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

There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):
I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

6. A) Regulatory Impact Summary Table
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**Fiscal Benefits**

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

B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, has reviewed and approved this fiscal analysis.

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director |
| Date: | 08/26/2021 |

R354. Governor, Colorado River Authority of Utah.
R354-7. Preferences.
R354-7-101. Title.

This rule is known as “Preferences.”

R354-7-102. Reciprocal Preference for Providers of State Products.

(1)(a) The CRAU shall, for each Procurement, give a reciprocal preference to those Bidders offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah over those Bidders offering Procurement Items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to Procurement Items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that Procurement Item.

(c) To receive a reciprocal preference under this section, the Bidder shall certify on the bid that the Procurement Items offered are produced, manufactured, mined, grown, or performed in Utah.

(d) The reciprocal preference is waived in the certification described in Subsection (1)(c) does not appear on the bid.

(2)(a) If the Responsible Bidder submitting the lowest Responsive bid offers Procurement Items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another Responsible Bidder has submitted a Responsive bid offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other Bidder is equal to or less than the original lowest bid, the issuing Procurement unit shall:

(i) give notice to the Bidder offering Procurement Items that are produced, manufactured, mined, grown, or performed in Utah that the Bidder qualifies as a preferred Bidder; and...
(ii) make the purchase from the preferred Bidder if the Bidder agrees, in writing, to meet the low bid within 72 hours after notification that the Bidder is a preferred Bidder.

(b) The issuing Procurement unit shall include the exact price submitted by the lowest Bidder in the notice the issuing Procurement unit submits to the preferred Bidder.

(c) The issuing Procurement unit may not enter into a Contract with any other Bidder for the purchase until 72 hours have elapsed after notification to the preferred Bidder.

(3)(a) If there is more than one preferred Bidder, the issuing Procurement unit shall award the Contract to the willing preferred Bidder who was the lowest preferred Bidder originally.

(b) If there were two or more equally low preferred Bidders, the issuing Procurement unit shall comply with the rules of the rulemaking authority to determine which Bidder should be awarded the Contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

R354-7-103. Exception for Federally Funded Contracts.
This rule does not apply to the extent it conflicts with federal requirements relating to a Procurement that involves the expenditure of federal assistance, federal Contract funds, or federal financial participation funds.

KEY: Colorado, preferences
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE

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<th>TYPE OF RULE:</th>
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<tr>
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Agency Information

1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111

Contact person(s):

Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@utah.gov

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

General Information

2. Rule or section catchline:
R354-8. Contracts and Change Orders

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

Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for the contracts and change orders as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

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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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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Agency Authorization Information

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director | Date: 08/26/2021 |

R354. Governor, Colorado River Authority of Utah.
R354-8-101. Title.
This rule is known as "Contracts and Change Orders."
The Procurement Official is encouraged to establish standard Contract clauses to assist the CRAU and to help Contractors and potential Contractors to understand applicable requirements.
R354-8-103. Multiyear Contracts.
(1) Except as provided in Subsection (7), the CRAU may enter into a Multiyear Contract resulting from a Standard Procurement Process if:
   (a) the Procurement Official determines, in the discretion of the Procurement Official, that entering into a Multiyear Contract is in the best interest of the CRAU; and
   (b) the Invitation for Bids or Request for Proposals:
      (i) states the term of the Contract, including any possible renewals of the Contract;
      (ii) states the conditions for renewal of the Contract; and
      (iii) includes the provisions of Subsections (3) through (5) that are applicable to the Contract;
(2) In making the determination described in Subsection (1)(a), the Procurement Official shall consider whether entering into a Multiyear Contract will:
   (a) result in significant savings to the CRAU, including:
      (i) reduction of the administrative burden in procuring, negotiating, or administering contracts;
      (ii) continuity in operations of the CRAU; or
      (iii) the ability to obtain a volume or term discount;
(b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term Contract; or

(c) provide an incentive for a Bidder or Offeror to improve productivity through capital investment or better Technology.

(3)(a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.

(b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an Invitation for Bids, a Request for Proposals, or a Contract to the contrary, a Multiyear Contract, including a Contract that was awarded outside of an Invitation for Bids or Request for Proposals Process, may not continue or be renewed for any year after the first year of the Multiyear Contract if adequate funds are not appropriated or otherwise available to continue or renew the Contract.

(4) A Multiyear Contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the Multiyear Contract if:

(a) adequate funds to continue or renew the Contract have not been, but are expected to be appropriated by, and received from, the federal government;

(b) continuation or renewal of the Contract before the money is appropriated or received is permitted by the federal government; and

(c) the Contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(5) A Multiyear Contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the Multiyear Contract if:

(a) the portion of the Contract that is to be funded by funds of a public entity are appropriated;

(b) adequate federal funds to continue or renew the Contract have not been, but are expected to be, appropriated by, and received from, the federal government;

(c) continuation or renewal of the Contract before the federal money is appropriated or received is permitted by the federal government; and

(d) the Contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.

(6) The CRAU may not continue or renew a Multiyear Contract after the end of the Multiyear Contract term or the renewal periods described in the Contract, unless the CRAU engages in a new Standard Procurement Process or complies with an exception, described in this R354-8, to using a Standard Procurement Process.

(7) A Multiyear Contract, including any renewal periods, may not exceed a period of five years, unless:

(a) the Procurement Official determines, in writing, that:

(i) a longer period is necessary to obtain the Procurement Item;

(ii) a longer period is customary for industry standards; or

(iii) a longer period is in the best interest of the CRAU; and

(b) the written determination described in Subsection

(7)(a) is included in the file relating to the Procurement.

R354-8-104. Multiple Award Contracts.

(1)(a) Through a Standard Procurement Process, the CRAU may enter into Multiple Award Contracts with multiple persons.
(a) submit cost or pricing data relating to determining the Contract type that is in the best interest of the CRAU; 
(b) certify that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the CRAU.

R354-8-106.  Rules to Determine Allowable Incurred Costs -- Required Information.

(1)(a) The Procurement Officer may, by policy, establish the cost principles to be included in a cost-reimbursement Contract to determine incurred costs to calculate a reimbursement. 

(b) The cost principles established by rule under Subsection (1)(a) may be modified, by Contract, if the Procurement Official approves the modification.

(2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based Contract with the CRAU shall:

(a) submit cost or pricing data relating to determining the cost or pricing amount; and 

(b) certify that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the CRAU.

(3) The Procurement Official shall ensure that the date specified under Subsection (2)(b) is before:

(a) the pricing of any Contract awarded by a Standard Procurement Process or pursuant to a Sole Source Procurement, if the total Contract price is expected to exceed $100,000; or

(b) the pricing of any change order that is expected to exceed 20% of the original Contract amount.

R354-8-107.  Auditing of Books of Contractor or Subcontractor.

(1) A Procurement Official or an audit entity under Contract with the CRAU may audit the books and records of a Contractor or Subcontractor.

(2) An audit under Subsection (1):

(a) is limited to the books and records that relate to the applicable Contract or subcontract; and

(b) may occur only at a reasonable time and place.

(3) A Contractor shall maintain any books and records relating to a Contract for six years after the day on which the Contractor receives the final payment under the Contract, or until any audit initiated under this section within the six-year period have been completed, whichever is later.

(4) A Subcontractor shall maintain any books and records relating to a subcontract for six years after the day on which the Subcontractor receives the final payment under the subcontract, or until any audits initiated under this section within the six-year period have been completed, whichever is later.


(1) As used in this section, "Contract Price":

(a) means the price under an existing Contract between the CRAU and a Contractor; and

(b) does not include a proposed price or cost contained in a Solicitation Response or any other bid, proposal, or offer submitted by a person other than the Contractor under the existing Contract.

(2) A Contractor may:

(a) increase the Contract Price only in accordance with the terms of the Contract; and

(b) subject to Subsection (3), lower the Contract Price at any time during the time a Contract is in effect.
(1) A Contract entered into by the CRAU may provide for installment payments, including interest charges, over a period of time, if the Procurement Officer makes a written finding that:
   (a) the use of installment payments are in the interest of the CRAU;
   (b) installment payments are not used as a method of avoiding budgetary constraints;
   (c) the CRAU has obtained any budgetary approval and other approvals required for making the installment payments;
   (d) any aspects of the installment payments required in the Contract are in accordance with the requirements of law; and
   (e) for a Contract awarded through an Invitation for Bids or a Request for Proposals, the Invitation for Bids or Request for Proposals indicates that installment payments are required or permitted.
   
   (2)(a) The CRAU may not pay for a Procurement Item before the CRAU receives the Procurement Item, unless the Procurement Official determines that it is necessary or beneficial for the CRAU to pay for the Procurement Item before the CRAU receives the Procurement Item;
   (b) A Procurement Official's determination under Subsection (2)(a) shall be in writing unless:
      (i) the rulemaking authority has adopted a rule describing one or more circumstances under which a written determination is not necessary; and
      (ii) the Procurement Official's determination is under one of those circumstances;
   (3) Circumstances where prepayment may be necessary for, or beneficial to, the CRAU include:
      (a) when it is customary in the industry to prepay for the Procurement Item;
      (b) if the CRAU will receive an identifiable benefit by prepaying, including reduced costs, additional Procurement Items, early delivery, better service, or better Contract terms; or
      (c) other circumstances permitted by rule made by the rulemaking authority.
   (4) The Procurement Officer may adopt policies governing prepayments.
   (5) A prepaid expenditure shall be supported by documentation indicating:
      (a) the amount of the prepayment;
      (b) the prepayment schedule;
      (c) the Procurement Items to which each prepayment relates;
      (d) the remedies for a Contractor's noncompliance with requirements relating to the provision of the Procurement Items; and
      (e) any other terms and conditions relating to the payments and the Procurement Items.
   (6) The Procurement Official or the Procurement Official's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

R354-8-110. Leases.
(1) As used in this section, "lease" means for the CRAU to lease or lease-purchase a Procurement Item from a person.

(2) This section does not apply to the lease of real property.

(3) The CRAU may not lease a Procurement Item unless the CRAU complies with the requirements of this section.

(4) The CRAU may lease a Procurement Item if:
   (a) the Procurement Official determines that it is in the best interest of the CRAU to lease the Procurement Item, after the Procurement Official:
      (i) investigates alternative means of obtaining the Procurement Item; and
      (ii) considers the costs and benefits of the alternative means of obtaining the Procurement Item;
   (b) any conditions for renewal and cost are included in the lease;
   (c) the lease is awarded through a Standard Procurement Process, or an exception to a Standard Procurement Process described in Rule R354-5;
   (d) for a Standard Procurement Process, the Invitation for Bids, Request for Proposals, or request for quotes states:
      (i) that the CRAU is seeking, or willing to consider, a lease; and
      (ii) for a lease-purchase, that the CRAU is seeking, or willing to consider, a lease-purchase;
   (iii) the lease is not used to avoid competition; and
   (e) the lease complies with any other provision of law or rule applicable to the lease.

The CRAU may include in a Contract terms that provide for:
   (1) incentives, including bonuses;
   (2) payment of damages, including liquidated damages; or
   (3) penalties.

KEY: contracts, change orders
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R354-9 Filing ID 53869

Agency Information

1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Phone: Email:
Danny Schoenfeld 801-557-6260 dschoenfeld@Utah.gov
Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R354-9. Protests

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

Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for protests as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information

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


A) State budget:

There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses

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

There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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

<table>
<thead>
<tr>
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B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, has reviewed and approved this fiscal analysis.

(1) A protest may be filed with the Procurement Officer by a person who:

(a) has standing; and

(b) is aggrieved in connection with a Procurement or an award of a Contract.

(2) "Hearing" means a proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a Procurement Official in connection with the Procurement Official’s determination of an issue of fact or law or both.

(3) "Protest Appeal Record" means:

(a) a copy of the Procurement Official's written decision;

(b) any documentation and other evidence the Procurement Official relied upon in reaching the Procurement Official's decision;

(c) the recording of the hearing, if the Procurement Official held a hearing;

(d) a copy of the Protestor's written protest; and

(e) any documentation and other evidence submitted by the Protestor supporting the protest or the Protestor's claim of standing.

(4) "Protestor" means a person who files a protest under this part.

(5) "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:

(a) the cause of the injury or harm is:

(i) an infringement of the Protestor's own right and not the right of another person who is not a party to the Procurement;

(ii) reasonably connected to the CRAU's conduct; and

(iii) the sole reason the Protestor is not considered, or is no longer considered, for an award of a Contract under the Procurement that is the subject of the protest;

(b) a decision on the protest in favor of the Protestor:

(i) is likely to redress the injury or harm; and

(ii) would give the Protestor a reasonable likelihood of being awarded a Contract; and

(c) the Protestor has the legal authority to file the protest on behalf of the actual or prospective Bidder or Offeror or prospective contractor involved in the Procurement that is the subject of the protest.

(2)(a) A protest may not be filed after:

(i) the opening of bids, for a protest relating to a Procurement under a Bidding Process; or

(B) the deadline for submitting responses to the Solicitation, for a protest relating to another Standard Procurement Process; or

(ii) reasonably connected to the CRAU's conduct; and

(ii) the closing of the Procurement stage that is the subject of the protest;

(A) if the protest relates to a multiple-stage Procurement; and

(B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

(b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:

(i) the Protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:

(A) the opening of bids, for a protest relating to a Procurement under a Bidding Process; or

(B) the deadline for submitting responses to the Solicitation, for a protest relating to another Standard Procurement Process; or
(C) the closing of the Procurement stage that is the subject of the protest, if the protest relates to a multiple-stage Procurement; or

(ii) the protest relates to a Procurement process not described in Subsection (2)(a).

(3) A deadline under Subsection (2) for filing a protest may not be modified.

(4) A Protestor shall include in a protest:

(i) the Protestor's mailing address and email address; and

(ii) a concise statement of the facts and evidence:

(A) leading the Protestor to claim that the Protestor has been aggrieved in connection with a Procurement and providing the grounds for the Protestor's protest; and

(B) supporting the Protestor's claim of standing.

(b) A protest may not be considered unless it contains facts and evidence that, if true, would establish:

(i) a violation of this Procurement Procedure or other applicable law;

(ii) the CRAU's failure to follow a provision of a Solicitation;

(iii) an error made by an evaluation committee or conducting Procurement unit;

(iv) a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a Solicitation Response meets criteria in the Solicitation;

(v) a failure to correctly apply or calculate a scoring criterion; or

(vi) that Specifications in a Solicitation are unduly restrictive or unduly anticompetitive.

(5) A protest may not be based on:

(a) the rejection of a Solicitation Response due to a Protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a Solicitation Response;

(b) a vague or unsubstantiated allegation; or

(c) a person's claim that:

(i) the CRAU that complied with Section R354-1-105 did not provide individual notice of a Solicitation to the person; or

(ii) the person received late notice of a Solicitation for which notice was provided in accordance with Section R354-1-105.

(6) A protest may not include a request for:

(a) an explanation of the rationale or scoring of evaluation committee members;

(b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or

(c) other information, documents, or explanations not explicitly provided for in this rule.

(7) A person who fails to file a protest within the time prescribed in Subsection (2) may not:

(a) protest to the Procurement Official a Solicitation or award of a Contract; or

(b) file an action or appeal challenging a Solicitation or award of a Contract before an appeals panel, a court, or any other forum.

(8) Subject to the applicable requirements of Section 1-10-403, the Procurement Officer may enter into a settlement agreement to resolve a protest.


(1) After a protest is filed, the Procurement Official shall determine whether the protest is timely filed and complies fully with the requirements of Section R354-9-103.

(2) If the Procurement Official determines that the protest is not timely filed or that the protest does not fully comply with Section R354-9-103, the Procurement Official shall dismiss the protest without holding a hearing.

(3) If the Procurement Official determines that the protest is timely filed and complies fully with Section R354-9-103 the Procurement Official shall:

(a) dismiss the protest without holding a hearing if the Procurement Official determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the Procurement Official determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved to determine whether the protest should be upheld.

(4) (a) If a hearing is held on a protest, the Procurement Official may:

(i) subpoena witnesses and compel their attendance at the protest hearing;

(ii) subpoena documents for production at the protest hearing;

(iii) obtain additional information; and

(iv) obtain testimony from experts, the person filing the protest, representatives of the CRAU, or others to assist the Procurement Official to decide on the protest.

(b) The Rules of Evidence do not apply to a protest hearing.

(c) A rulemaking authority shall make rules relating to intervention in a protest, including designating:

(i) who may intervene; and

(ii) the time and manner of intervention.

(d) A Procurement Official shall:

(i) record each hearing held on a protest under this section;

(ii) regardless of whether a hearing on a protest is held under this section, preserve any records and other evidence relied upon in reaching the Procurement Official's written decision until the decision, and any appeal of the decision, becomes final; and

(iii) if the Procurement Official's decision submit the Protest Appeal Record to the Procurement policy board chair within seven days after receiving:

(A) notice that an appeal of the Procurement Official's decision has been filed under Section R354-10-103; or

(B) a request for the Protest Appeal Record from the chair of the Procurement policy board.

(e) A Procurement Official's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to late question or challenge the Procurement Official's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) The deliberations of a Procurement Official may be held in private.

(6) (a) A Procurement Official shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.
(b) The decision shall:
(i) state the reasons for the action taken;
(ii) inform the Protestor of the right to judicial or administrative review as provided in this chapter; and
(iii) indicate the amount of the security deposit or bond required under Section R354-10-104.
(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the Protestor.

(7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section R354-12-103.

(8)(a) A decision described in Subsection (6)(a) that is issued in relation to the CRAU is final and conclusive unless the Protestor files an appeal under Section R354-10-103.

(b) A decision described in Subsection (6)(a) that is issued in relation to a legislative Procurement unit, a judicial Procurement unit, a nonadopting local government Procurement unit, or a public transit district is final and conclusive unless the Protestor files an appeal under Section R354-11-102.

(9) If the Procurement Official does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the Procurement Official, or within a longer period as may be agreed upon by the parties, the Protestor may proceed as if an adverse decision had been received.

(10) A determination under this section by the Procurement Official regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

(11) An individual is not precluded from acting and may not be disqualified or required to be recused from acting, as a Procurement Official because the individual also acted in another capacity during the Procurement process, as required or allowed in this rule.

KEY: protests, resolutions
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206
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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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</tr>
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</table>

B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 | 63M-14-206 |

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: | 11/01/2021 |

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director | Date: 08/26/2021 |

R354. Governor, Colorado River Authority of Utah.
R354-10-101. Title.
This rule is known as "Procurement Appeals Panel."

As used in this rule:
(1) "Appointing Officer" means:
(a) the chair of the Authority; or
(b) a designee of the chair who is not employed by the CRAU responsible for the Solicitation, Contract award, or other action that is the subject of the Protestor's protest.
(2) "Procurement Appeals Panel" means the Appointing Officer or the panel appointed by the Appointing Officer.
(3) "Protest Appeal Record" means the same as that term is defined in Section R354-9-102.
(4) "Protestor" means the same as that term is defined in Section R354-9-102.

(1)(a) Subject to R354-10-104, a Protestor may appeal to the chair of the Board a protest decision of the Procurement Official that is subject to this rule by filing a written notice of appeal with the chair of the Board within seven days after:
(i) the day on which the written decision described in Section R354-9-104 is:
The Appointing Officer may:

- (A) personally, served on the party or the party's representative; or
- (B) emailed or mailed to the address or email address provided by the party under Subsection 1-9-103(4); or
- (ii) the day on which the 30-day period described in Subsection R354-9-104(9) ends, if a written decision is not issued before the end of the 30-day period,

- (b) A notice of appeal under Subsection (1)(a) shall:
  - (i) include the address of record and email address of record of the party filing the notice of appeal; and
  - (ii) be accompanied by a copy of any written protest decision.

- (c) The deadline for appealing a protest decision may not be modified.

- (2) A person may not base an appeal of a protest under this section on:
  - (a) a ground not specified in the person's protest under Section R354-9-103; or
  - (b) new or additional evidence not considered by the Procurement Official.

- (3)(a) A person may not appeal from a protest described in Section R354-9-103, unless:
  - (i) a decision on the protest has been issued; or
  - (ii) a decision is not issued, and the 30-day period described in Subsection R354-9-104(9), or a longer period agreed to by the parties, has passed;

- (b) The CRAU may not appeal a protest decision or other determination made by the Procurement Official.

- (4)(a) Within seven days after the chair receives the Protest Appeal Record, the chair shall submit a written request to the Procurement Official for the Protest Appeal Record.

- (b) Within seven days after the chair receives the Protest Appeal Record from the Procurement Official, the Appointing Officer shall, in consultation with the attorney general's office or approved outside counsel:
  - (i) review the appeal to determine whether the appeal complies with the requirements of Subsections (2), (3), and (4) and Section R354-10-104; and
  - (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding a hearing if the Appointing Officer determines that the claim or appeal, respectively, fails to comply with any of the requirements listed in Subsection (5)(a)(i); or
  - (B) conduct an administrative review sitting as the Procurement Appeals Panel or appoint a Procurement Appeals Panel to conduct an administrative review of any claim in the appeal that has not been dismissed under Subsection (5)(a)(ii)(A), if the Appointing Officer determines that one or more claims asserted in the appeal comply with the requirements listed in Subsection (5)(b)(i).

- (c) A Procurement Appeals Panel appointed under Subsection (5)(a) shall consist of an odd number of at least three individuals. The Appointing Officer selects the panel members. The members may be:
  - (i) a member of the Board; or
  - (ii) a designee of a member appointed under Subsection (5), if the designee is approved by the chair of the Board.

- (d) The Appointing Officer shall appoint one of the members of the Procurement Appeals Panel to serve as the coordinator of the panel.

- (e) The Appointing Officer may:
  - (i) appoint the same Procurement Appeals Panel to hear more than one appeal; or
  - (ii) appoint a separate Procurement Appeals Panel for each appeal.

- (f) The Appointing Officer may not appoint a person to a Procurement Appeals Panel if the person is employed by the CRAU responsible for the Solicitation, Contract award, or other action that is the subject of the Protester's protest.

- (g) The Appointing Officer shall, at the time the Procurement Appeals Panel is appointed, provide appeals panel members with a copy of the notice of appeal filed under Subsection (2) and the protest decision record.

- (5)(a) A Procurement Appeals Panel described in Subsection (5):
  - (i) shall conduct an administrative review of the appeal within 30 days after the day on which the Appointing Officer chose to either hear the appeal or, if appoint a panel, 30 days after the Procurement Appeals Panel is appointed, or before a later date that any parties agree upon, unless the appeal is dismissed under Subsection (8)(a); and
  - (ii) (A) may, as part of the administrative review and at the sole discretion of the Procurement Appeals Panel, conduct an informal hearing, if the Procurement Appeals Panel considers a hearing to be necessary; and
  - (B) if the Procurement Appeals Panel conducts an informal hearing, shall, at least seven days before the hearing, mail, email, or hand-deliver a written notice of the hearing to the parties to the appeal.

- (b) A Procurement Appeals Panel may, during an informal hearing, ask questions and receive responses regarding the appeal and the Protest Appeal Record to assist the Procurement Appeals Panel to understand the basis of the appeal and information contained in the Protest Appeal Record but may not otherwise take any additional evidence or consider any additional ground for the appeal.

- (6) A Procurement Appeals Panel shall consider and decide the appeal based solely on:
  - (a) the notice of appeal and the Protest Appeal Record; and
  - (b) responses received during an informal hearing if an informal hearing is held and to the extent allowed under Subsection (6)(b).

- (7) A Procurement Appeals Panel:
  - (a) may dismiss an appeal if the appeal does not comply with the requirements of this rule; and
  - (b) shall uphold the protest decision unless the protest decision is arbitrary and capricious or clearly erroneous.

- (8) The Procurement Appeals Panel shall, within seven days after the day on which the Procurement Appeals Panel concludes the administrative review:
  - (a) issue a written decision on the appeal; and
  - (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the Procurement Official.

- (9)(a) The deliberation of a Procurement Appeals Panel may be held in private.

- (b) If the Procurement Appeals Panel is a public body, as defined in Section 52-4-103, the Procurement Appeals Panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.

- (10) A Procurement Appeals Panel may continue an administrative review under this section beyond the 30-day period described in Subsection (6)(a)(i) if the Procurement Appeals Panel determines that the continuance is in the interests of justice.
(11) If a Procurement Appeals Panel determines that the decision of the Procurement Official is arbitrary and capricious or clearly erroneous, the Procurement Appeals Panel:

(a) shall remand the matter to the Procurement Official, to cure the problem or render a new decision; and

(b) may recommend action that the Procurement Official should take; and

(c) may not order that:

(i) a Contract be awarded to a certain person;

(ii) a Contract or Solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection (12)(a).

(12) The Procurement Official may adopt policies relating to the conduct of an appeals proceeding, including rules that provide for:

(a) expedited proceedings; and

(b) electronic participation in the proceedings by panel members and participants.

(13) The Rules of Evidence do not apply to a hearing held by a Procurement Appeals Panel.

(14) Rule R354-13 applies to the records involved in the process described in this section, including the decision issued by a Procurement Appeals Panel.

R354-10-104. Requirement to Pay a Security Deposit or Post a Bond -- Exceptions -- Amount -- Forfeiture of Security Deposit or Bond.

A person who files a notice of appeal under Section R354-10-103 shall, before the expiration of the time provided under Subsection R354-10-103(1) for filing a notice of appeal, pay a security deposit or post a bond with the office of the Procurement Official.

(1) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an Invitation for Bids or Request for Proposals and except as provided in Subsection (2)(b)(ii):

(i) $20,000, if the total Contract value is under $500,000;

(ii) $25,000, if the total Contract value is $500,000 or more but less than $1,000,000;

(iii) $50,000, if the total Contract value is $1,000,000 or more but less than $2,000,000;

(iv) $95,000, if the total Contract value is $2,000,000 or more but less than $4,000,000;

(v) $180,000, if the total Contract value is $4,000,000 or more; or

(b) $20,000, for an appeal:

(i) relating to any type of Procurement process other than an Invitation for Bids or Request for Proposals;

(ii) relating to an Invitation for Bids or Request for Proposals, if the estimated total Contract value cannot be determined; or

(iii) of a debarment or suspension.

(2)(a) For an appeal relating to an Invitation for Bids, the estimated total Contract value shall be based on:

(i) the lowest Responsive bid amount for the entire term of the Contract, excluding any renewal period, if the bid opening has occurred;

(ii) the total budget for the Procurement Item for the entire term of the Contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the Contract is being rebid, the historical usage and amount spent on the Contract over the life of the Contract.

(b) For an appeal relating to a Request for Proposals, the estimated total Contract value shall be based on:

(i) the lowest cost proposed in a response to a Request for Proposals, considering the entire term of the Contract, excluding any renewal period, if the opening of proposals has occurred;

(ii) the total budget for the Procurement Item over the entire term of the Contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the Contract is being reissued, the historical usage and amount spent on the Contract over the life of the Contract that is being reissued.

(3) The Procurement Official shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the CRAU under Subsection (4); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the CRAU under Subsection (4).

(4) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the CRAU if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the Procurement Appeals Panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

R354-10-105. Discontinued Appeal with Prejudice, Except as Authorized.

After notice of an appeal to the Board is filed under Section R354-10-103, no party may discontinue the appeal without prejudice, except as authorized by the Procurement Appeals Panel appointed for the appeal.


A determination of an issue of fact by a Procurement Appeals Panel may not be overturned on appeal unless the determination is arbitrary and capricious or clearly erroneous.

KEY: procurement appeals, Colorado

NOTICE OF PROPOSED RULE

Type of Rule: New

Utah Admin. Code Ref (R no.): R354-11

Filing ID: 53871
Agency Information

1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@utah.gov

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

General Information

2. Rule or section catchline:
R354-11. Appeals to the Court and Court Proceedings

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

Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for Appeals to the Court and Court Proceedings Panel as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

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

There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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Fiscal Benefits

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</table>
NOTICES OF PROPOSED RULES

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

B) Department head approval of regulatory impact analysis:
The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021
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
Agency head or designee, and title: Danny Schoenfeld, Managing Director
Date: 08/26/2021

R354. Governor, Colorado River Authority of Utah.
R354-11. Appeals to the Court and Court Proceedings.
R354-11-101. Title.
This rule is known as "Appeals to the Court and Court Proceedings."

R354-11-102. Appeal to Utah Court of Appeals.
1(a) As provided in this rule:
(i) a person may appeal a dismissal of an appeal by the authority chair under Subsection R354-10-103(5)(b)(ii)(A);
3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for General Provisions Related to Protests or Appeal as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities
("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):
I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

6. 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.)

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Fiscal Benefits

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

B) Department head approval of regulatory impact analysis:
The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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 R15-1-5 for more information.)

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Danny Schoenfeld, Managing Director</td>
<td>08/26/2021</td>
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</table>

R354-12. General Provisions Related to Protests or Appeal.

R354-12-101. Title.

This rule is known as “General Provisions Related to Protests or Appeal.”

R354-12-102. Limitation on Challenges -- Compliance with Federal Law.

(1) A person may not challenge a Procurement, a Solicitation, or an appeal of a Procurement Appeals Panel decision under Section R354-11-102; and

(2) until:

(a) Each administrative and judicial remedies are exhausted; or

(b) for a protest under Section R354-9-103, an appeal under Section R354-10-103, an appeal under Section R354-11-102, or an appeal to a higher court than district court the Procurement Officer, after consultation with the attorney general’s office, or approved outside counsel, and the CRAU Chair, makes a written determination that award of the Contract without delay is in the best interest of the CRAU.

R354-12-104. Costs to or Against Protestor.

(1) If a protest is sustained administratively or upon administrative or judicial review and the protesting Bidder or Offeror should have been awarded the Contract under the Solicitation but is not, the Protestor is entitled to the following relief as a claim against the CRAU:

(a) the reasonable costs incurred in connection with the Solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) If the final determination of a Procurement Appeals Panel or other appellate body does not sustain the protest, the Protestor shall reimburse the CRAU for each expenses that the CRAU incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the CRAU to witnesses or appeals panel members, and any additional expenses incurred by the staff of the CRAU who have provided materials and administrative services to the Procurement Appeals Panel for that case.

(3) Notice of Claim Against a Governmental Entity or a Government Employee, do not apply to actions brought under this Procurement Procedure by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

R354-12-105. Effect of Prior Determination by Agents of Procurement Unit.

In any judicial action under Section R354-11-102, determinations by employees, agents, or other persons appointed by the CRAU shall be final and conclusive only as provided in Sections R354-12-109, R354-9-104, and R354-10-106.

R354-12-106. Effect of Violation Found After Award of Contract.

(1) If after award of a Contract it is determined administratively or upon administrative or judicial review that a Procurement or award of a Contract is in violation of law:

(a)(i) if the person awarded the Contract did not act fraudulently or in bad faith:

(A) the Contract may be ratified and affirmed if it is in the best interests of the CRAU; or

(B) the Contract may be terminated; and

(ii) the person awarded the Contract shall be compensated for the actual expenses reasonably incurred under the Contract before the termination, plus a reasonable profit; or

(b) if the person awarded the Contract acted fraudulently or in bad faith:

(i) the Contract may be declared null and void; or

(ii) the Contract may be ratified and affirmed if it is in the best interests of the CRAU, without prejudice to the CRAU’s rights to any appropriate damages.
(2) Under no circumstances is a person entitled to consequential damages in relation to a Solicitation or award of a Contract under this Procurement Procedure, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

R354-12-107. Effect of Violation Found Prior to Award of Contract.

If, before award of a Contract, it is determined administratively or upon administrative or judicial review that a Procurement or proposed award of a Contract is in violation of law, the Procurement or proposed award shall be cancelled or revised to comply with the law.

R354-12-108. Interest Rates.

In controversies between the CRAU and a Contractor under this Procurement Procedure, interest on amounts ultimately determined to be due to a Contractor or the CRAU are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

R354-12-109. Determinations Final Except When Arbitrary and Capricious or Clearly Erroneous.

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

1. Section R354-1-107;
2. Section R354-1-108;
3. Section R354-4-102;
4. Section R354-4-107;
5. Section R354-5-104;
6. Section R354-6-103;
7. Subsection R354-8-103(1) or (2);
8. Subsection R354-8-103(5);
9. Section R354-8-105;

KEY: protests, appeals

Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

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**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** New

**Utah Admin. Code Ref (R no.):** R354-13  Filing ID 53873

**Agency Information**

1. **Department:** Governor
2. **Agency:** Colorado River Authority of Utah
3. **Room no.:** Suite 350
4. **Street address:** 60 E South Temple
5. **City, state and zip:** Salt Lake City, UT 84111

**Contact person(s):**

- **Name:** Danny Schoenfeld
- **Phone:** 801-557-6260
- **Email:** dschoenfeld@utah.gov

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

**General Information**

1. **Rule or section catchline:** R354-13. Records
2. **Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):

   Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

3. **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 provides an overview for records as it relates specifically to the Colorado River Authority of Utah.

**Fiscal Information**

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

   **A) State budget:**
   
   There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

   **B) Local governments:**
   
   There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

   **C) Small businesses** ("small business" means a business employing 1-49 persons):
   
   There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

   **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. This rule does not apply to non-small businesses.

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

   There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.
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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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

B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Danny Schoenfeld, Managing Director

Date: 08/26/2021

R354. Governor, Colorado River Authority of Utah.

This rule is known as "Records."


(1) Any Procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Written determinations required by this rule shall be retained in the appropriate official Contract file of:

    (a) the division;
    (b) except as provided in Subsection (2)(c), the independent Procurement unit; or
    (c) for a legislative Procurement unit or a judicial Procurement unit, the person designated by a rule made by the rulemaking authority.

(3) The CRAU shall keep, and make available to the public, upon request, written records of Procurements for which an expenditure of $100 or more is made, for the longer of:

    (a) six years;
    (b) the time otherwise required by law; or
    (c) the period provided by a rule made by the rulemaking authority.

(4) The written record described in Subsection (3) shall include:
(a) the name of the provider from whom the Procurement was made;
(b) a description of the Procurement Item;
(c) the date of the Procurement; and
(d) the expenditure made for the Procurement.


A Procurement Official shall maintain a record of any Contracts made under Sections R354-2-103, R354-5-102, or R354-5-103, in accordance Government Records Access and Management Act. The record shall contain each Contractor's name, the amount and type of each Contract, and a listing of the Procurement Items to which the Contract relates.

KEY: records retention
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R354-14 Filing ID 53874

Agency Information

1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111
Contact person(s):
Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@Utah.gov

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

General Information

2. Rule or section catchline:
R354-14. Interaction with Public Sector Entities

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for Interaction with Public Sector Entities as it relates specifically to the Colorado River Authority of Utah.

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

A) State budget:
There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.

B) Local governments:
There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Commission bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):
I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
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<tbody>
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Fiscal Benefits

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Net Fiscal Benefits

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</table>

B) Department head approval of regulatory impact analysis:
The Executive Director of Colorado River Authority of Utah, Amy Haas, has reviewed and approved this fiscal analysis.

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Danny Schoenfeld, Managing Director | Date: | 08/26/2021 |

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 63M-14-206

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: 11/01/2021

R354. Governor, Colorado River Authority of Utah.
R354-14-101. Title.
This rule is known as "Interaction with Public Sector Entities."

R354-14-102. Agreements Between Public Entities.
The CRAU may enter into an agreement with one or more other public entities to:

1. (1)(a) sponsor, conduct, or administer a cooperative agreement for:
   (a) the Procurement of a Procurement Item, in accordance with the requirements of Section R354-14-105; or
   (b) the disposal of a Procurement Item;
   (2) cooperatively use a Procurement Item;
   (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
   (4) provide personnel, if the receiving public entity pays the public entity providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or:
   (5) purchase from, contribute to, or otherwise participate in a pooled governmental funds to acquiring or sharing information, data, reports, or other services in accordance with the terms of the agreement.

R354-14-103. Purchases Between Public Entities.

1. (a) The CRAU may purchase a Procurement Item from another public entity.
   (b) A purchase under Subsection (1)(a) is not subject to the Procurement requirements of this Procurement Procedure.
   (i) Subsection (1)(a) does not authorize the CRAU to obtain a Procurement Item under a Contract of another public entity.
   (ii) Subsection (1)(a) does not affect the authority of the CRAU relating to a Cooperative Procurement under Subsection R354-14-105(1)(b).
   (2) The CRAU may publish a schedule of costs or fees for Procurement Items available for purchase by another public entity.

R354-14-104. No Circumvention.
The CRAU may not enter into a Cooperative Procurement agreement to circumventing this Procurement Procedure.

(1) The CRAU may purchase a Procurement Item through a Cooperative Procurement by using the State of Utah Cooperative Contracts available for public entities pursuant to Section 63G-6a-2105, without going through a Standard Procurement Process or an exception to a Standard Procurement Process.

(2) The CRAU may:
    (a) Contract with the federal government without going through a Standard Procurement Process or an exception to a Standard Procurement Process, described in Rule R354-14-5, Exceptions to Procurement Requirements, if the Procurement Item obtained under the Contract is provided:
        (i) directly by the federal government and not by a person contracting with the federal government; or
        (ii) by a person under Contract with the federal government that obtained the Contract in a manner that substantially complies with this Procurement Procedure;
    (b) participate in, sponsor, conduct, or administer a Cooperative Procurement with another public entity in Utah, if:
        (i) each party unit involved in the Cooperative Procurement enters into an agreement describing the rights and duties of each party; 
        (ii) the Procurement is conducted, and the Contract awarded, in accordance with the requirements of this Procurement Procedure;
        (iii) the Solicitation:
            (A) clearly indicates that the Procurement is a Cooperative Procurement; and
            (B) identifies each party that may purchase under the resulting Contract; and
        (iv) each party involved in the Cooperative Procurement signs a participating addendum describing its rights and obligations in relation to the resulting Contract; or
    (c) purchase under, or otherwise participate in, an agreement or Contract of a cooperative purchasing organization, if:
        (i) each party involved in the Cooperative Procurement enters into an agreement describing the rights and duties of each party;
        (ii) the Procurement was conducted in accordance with the requirements of this Procurement Procedure;
        (iii) the Solicitation: clearly indicates that the Procurement is a Cooperative Procurement; and
        (A) clearly indicates that the Procurement is a Cooperative Contract;
        (B) identifies each party that may purchase under the resulting Contract; and
        (iv) each party involved in the Cooperative Procurement signs a participating addendum describing its rights and obligations in relation to the resulting Contract.

(3) The CRAU may not obtain a Procurement Item under a Contract that results from a Cooperative Procurement described in Subsection (1), unless the CRAU:
    (a) signs a participating addendum to the Contract as required by this section.

(4) The CRAU may not obtain a Procurement Item under a Contract held by the United States General Services Administration, unless, based upon documentation provided by the CRAU, the Procurement Official determines in writing that the United States General Services Administration procured the Contract in a manner that substantially complies with this Procurement Procedure.

KEY: interaction, public entities
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206

NOTICE OF PROPOSED RULE
TYPE OF RULE: New
Utah Admin. Code Ref (R no.): R354-15
Filing ID: 53875

Agency Information
1. Department: Governor
Agency: Colorado River Authority of Utah
Room no.: Suite 350
Street address: 60 E South Temple
City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Danny Schoenfeld
Phone: 801-557-6260
Email: dschoenfeld@Utah.gov

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

General Information
2. Rule or section catchline: R354-15. Prohibited Conduct and Penalties
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): Per Section 63M-14-206, this new state agency was created and given authority to create rules overseeing Colorado River water resources.

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 provides an overview for prohibited conduct and penalties as it relates specifically to the Colorado River Authority of Utah.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget: There is no anticipated cost or savings to the state budget. This rule does not apply to the state budget.
B) Local governments:

There is no anticipated cost or savings to local governments. This rule does not apply to local governments.

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

There is no anticipated cost or savings to small businesses. This rule does not apply to small businesses.

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. This rule does not apply to non-small businesses.

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

There is no anticipated cost or savings to other persons. There will be no change in procedure as these requirements and guidelines already exist through the Committee bylaws.

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 compliance cost since there will be no measurable fiscal impact on persons due to 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):

I, Amy Haas, Executive Director, have reviewed this and found that there is no impact on businesses.

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.)

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</table>

Other Persons | $0   | $0   | $0   |

Total Fiscal Cost | $0   | $0   | $0   |

Fiscal Benefits:

State Government | $0   | $0   | $0   |
Local Governments | $0   | $0   | $0   |
Small Businesses | $0   | $0   | $0   |
Non-Small Businesses | $0   | $0   | $0   |
Other Persons | $0   | $0   | $0   |

Total Fiscal Benefits | $0   | $0   | $0   |

Net Fiscal Benefits | $0   | $0   | $0   |

B) Department head approval of regulatory impact analysis:

The Executive Director of Colorado River Authority of Utah, Amy Haas, 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 63M-14-206

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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.
R354. Governor, Colorado River Authority of Utah.

This rule is known as "Prohibited Conduct and Penalties."


Terms used in this rule are defined in Section R354-1-102, with the addition of:

(1) "Contract administration professional":
   (a) means an individual who;
   (i) directly under Contract with the CRAU; or
   (ii) employed by a person under Contract with the CRAU; and
   (A) has responsibility in: developing a Solicitation or Grant, or conducting the Procurement process; or
   (B) supervising or overseeing the administration or management of a Contract or Grant; and
   (b) does not include an employee of the CRAU.

(2) "Contribution":
   (a) means a voluntary gift or donation of money, service, or anything of value, to the CRAU for the CRAU's use and not for the primary use of an individual employed by the CRAU; and
   (b) includes:
   (i) a philanthropic donation;
   (ii) admission to a seminar, Vendor fair, charitable event, fundraising event, or similar event that relates to the function of the CRAU;
   (iii) the purchase of a booth or other display space at an event sponsored by the CRAU or a group of which the CRAU is a member; and
   (iv) the sponsorship of an event that is organized by the CRAU.

(3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(4) "Governing body" means CRAU Board.

(5) "Gratuity":
   (a) means anything of value given:
   (i) without anything provided in exchange; or
   (ii) in excess of the market value of that which is provided in exchange;
   (b) includes:
   (i) a gift or favor;
   (ii) money;
   (iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
   (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
   (v) employment;
   (vi) admission to an event;
   (vii) a meal, lodging, or travel;
   (viii) entertainment for which a charge is normally made; and
   (ix) a raffle, drawing for a prize, or lottery; and
   (c) does not include:
   (i) an item, including a meal in association with a training seminar, that is:
      (A) included in a Contract or Grant; or
      (B) provided in the proper performance of a requirement of a Contract or Grant;
   (ii) an item requested to evaluate properly the award of a Contract or Grant;
   (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a Procurement Item;
   (iv) a meal provided by an organization or association, including a professional or educational association, an association of Vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to Solicitations;
   (v) a product sample submitted to the CRAU to assist the CRAU to evaluate a Solicitation;
   (vi) a political campaign contribution;
   (vii) an item generally available to the public; or
   (viii) anything of value that one public entity provides to another public entity.

(6) "Hospitality gift":
   (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
   (b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.

(7) "Kickback":
   (a) means a negotiated bribe provided in connection with a Procurement or the administration of a Contract or Grant; and
   (b) does not include anything listed in Subsection (5)(c).

(8) "Procurement" has the same meaning as defined herein, but also includes the awarding of a Grant.

(9) "Procurement professional":
   (a) means an individual who is an employee, and not an independent Contractor, of the CRAU, and who, by title or primary responsibility:
      (i) has Procurement decision making authority; and
      (ii) is assigned to be engaged in, or is engaged in:
         (A) the Procurement process; or
         (B) the process of administering a Contract or Grant, including enforcing Contract or Grant compliance, approving Contract or Grant payments, or approving Contract or Grant change orders or amendments; and
   (b) excludes:
      (i) any individual who, by title or primary responsibility, does not have Procurement decision making authority;
      (ii) an individual holding an elective office;
      (iii) a member of a governing body;
      (iv) a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the Procurement process or the Contract or Grant administration process.


(1) This rule applies to the CRAU.

(2) A Procurement professional is subject to this rule at any time during:
   (a) the Procurement process; and
   (b) the administration of a Contract or Grant.
R354-15-104. Unlawful Conduct - Exceptions - Classification of
Offenses.
(1)(a) It is prohibited for a person who has or is seeking a Contract with or a Grant from the CRAU knowingly to give, offer, promise, or pledge to give, a gratuity or kickback to:
(i) the CRAU;
(ii) a Procurement professional or Contract Administration professional; or
(iii) any individual who knows a family member of an individual described in Subsection (1)(a)(ii).
(b) It is not unlawful for a public entity to give, offer, promise, or pledge to give a contribution to another public entity.
(c) A person is not guilty of prohibited conduct under Subsection (1)(a) for:
(i) giving or offering, promising, or pledging to give a contribution to the CRAU, unless done with the intent to induce the CRAU, in exchange, to:
(A) award a Contract or Grant;
(B) make a Procurement decision; or
(C) take an action relating to the administration of a Contract or Grant;
(ii) giving or offering, promising, or pledging to give something of value to an organization to which a Procurement professional or Contract Administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
(A) award a Contract or Grant;
(B) make a Procurement decision; or
(C) take an action relating to the administration of a Contract or Grant.
(2)(a) It is prohibited for a Procurement professional or Contract Administration professional, or a family member of either, knowingly to receive or accept offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback.
(b) An individual is not guilty of prohibited conduct under Subsection (2)(a) for receiving or accepting, offering, or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of the CRAU, unless done with the intent that the CRAU, in exchange:
(i) award a Contract or Grant;
(ii) make a Procurement decision; or
(iii) take an action relating to the administration of a Contract or Grant.
(3) Notwithstanding Subsections (1) and (2), it is not prohibited for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:
(a) the total value of the hospitality gift is less than $10;
(b) the aggregate value of any hospitality gifts from a person to the recipient in a calendar year is less than $50.
(4) A person who engages in the conduct prohibited under Subsection (1) or (2) may be punished for such conduct, including:
(a) dismissal from employment, cancellation of the Contract to provide Procurement services, or other disciplinary action;
(b) disbarment;
(c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
(d) any other civil penalty provided by law.

(1) It is prohibited for a person knowingly to divide a single Procurement into multiple smaller Procurements if dividing the single Procurement:
(a) is done with the intent to avoid the use of a Standard Procurement Process that would have otherwise been required if the Procurement had not been divided;
(b) constitutes prohibited conduct under Section R354-2-103; or
(c) is otherwise prohibited by this Procurement Procedure.
(2) A violation of Subsection (1) is subject to Subsection R354-15-104(4).

R354-15-106. Improper Action Against a Public Officer or Employee Involved in the Procurement Process.
(1)(a) It is prohibited for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:
(i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this Procurement Procedure;
(ii) influence the officer or employee to award a Contract under this Procurement Procedure to the person; or
(iii) retaliate against the officer or employee for:
(A) not awarding a Contract under this Procurement Procedure to the person;
(B) issuing a decision or taking an action under this Procurement Procedure that is averse to the person; or
(C) performing a duty or responsibility the officer or employee has under this Procurement Procedure.
(b) A violation of Subsection (1)(a) subjects the person to:
(i) suspension or disbarment.
(2) (a) It is prohibited for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:
(i) prevent the public officer or employee from performing a duty or responsibility that the officer or employee has under this Procurement Procedure;
(ii) influence the officer or employee to award a Contract under this Procurement Procedure to the person; or
(iii) retaliate against the public officer or employee for:
(A) not awarding a Contract under this Procurement Procedure to the person;
(B) issuing a decision or taking an action under Procurement Procedure that is averse to the person; or
(C) performing a duty or responsibility the officer or employee has under Procurement Procedure.
(b) violation of Subsection (2)(a) subjects the person to suspension or disbarment.

R354-15-107. Discretion to Declare Contract or Grant Void -- Limitations.
(1) Subject to Subsection (2), a Contract or Grant to a person who engages in conduct prohibited under R354-15-107 may, in the sole discretion of the Executive Director, declare the Contract or Grant to be void and unenforceable, unless a third party has substantially changed its position in reliance upon the Contract or Grant.
(2) Declaring a Contract or Grant void under Subsection (1) does not affect the obligation of the CRAU to pay for a Contractor's proper performance completed under the Contract or Grant or the value the Contractor provides to the CRAU under the Contract or Grant before the Contract or Grant is declared void.

Nothing in this R354-15-108 restricts the CRAU from:
(1) requiring an evaluation committee member to disclose a conflict of interest; or
(2) removing an evaluation committee member for having a conflict of interest.

(1) As used in this R354-15-109, "prohibited conduct" means:
(a) conduct prohibited under this R354-15-109; or
(b) conduct, including bid rigging, improperly steering a Contract to a favored Vendor, exercising undue influence on an individual involved in the Procurement process, or participating in collusion or other anticompetitive practices, prohibited under other applicable law.
(2)(a) A Procurement professional with actual knowledge that a person has engaged in prohibited conduct shall report the person's prohibited conduct to:
(i) the CRAU Chair and Executive Director; and
(ii) the attorney general or approved outside counsel.
(b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in prohibited conduct may report the person's prohibited conduct to:
(i) the CRAU Chair and Executive Director; or
(ii) the attorney general or approved outside counsel.
(3) A Procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action.

KEY: prohibited conduct
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63M-14-206
B) Local governments:
There is no impact on local governments because they neither fund nor provide physician services under the Medicaid program.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as this change neither affects funds allocated nor rates of reimbursement.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no impact on non-small businesses as this change neither affects member services nor rates of reimbursement.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no impact on Medicaid providers and Medicaid members as this change neither affects member services nor rates of reimbursement.

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 impact on a single Medicaid provider or Medicaid member as this change neither affects member services nor rates of 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 costs nor revenue as service and reimbursement remain the same. Nate Checketts, 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.)

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

B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Health, Nate Checketts, 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

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021
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
Agency head or designee, and title: Nate Checketts, Executive Director Date: 09/14/2021
R414-1. Utah Medicaid Program.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the Utah Medicaid State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;
(b) outpatient hospital services and rural health clinic services;
(c) other laboratory and x-ray services;
(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;
(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;
(f) family planning services and supplies for individuals of child-bearing age;
(g) physician’s services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;
(h) podiatrist’s services;
(i) optometrist’s services;
(j) psychologist’s services;
(k) interpreter’s services;
(l) home health services:
   (i) intermittent or part-time nursing services provided by a home health agency;
   (ii) home health aide services by a home health agency; and
   (iii) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the Utah Medicaid State Plan;

(n) clinic services;
(o) dental services;
(p) physical therapy and related services;
(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;
(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the Utah Medicaid State Plan;

(i) services for individuals [age 65]65 years of age or older in institutions for mental diseases:
   (i) inpatient hospital services for individuals [age 65]65 years of age or older in institutions for mental diseases;
   (ii) skilled nursing services for individuals [age 65]65 years of age or older in institutions for mental diseases; and
   (iii) intermediate care facility services for individuals [age 65]65 years of age or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with Subsection 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;
(w) nurse-midwife services;
(x) family or pediatric nurse practitioner services;
(y) physician assistant services;
(z) hospice care in accordance with Subsection 1905(o) of the Social Security Act;
(aa) case management services in accordance with Subsection 1905(a)(19) or Subsection 1915(g) of the Social Security Act;
(bb) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;
(cc) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with Section 1920 of the Social Security Act; and
(dd) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:
   (i) medical or remedial services provided by licensed practitioners, other than physician’s services, within the scope of practice as defined by state law;
   (ii) transportation services;
   (iii) skilled nursing facility services for patients under 21 years of age;
   (iv) emergency hospital services; and
   (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse; and
   (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
      (i) it is medically necessary and more appropriate than any Medicaid-covered service; and
      (ii) it is more cost effective than any Medicaid-covered service.

KEY: Medicaid
Date of Last Change: [August 16, 2021]
Notice of Continuation: February 15, 2017
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

NOTICE OF PROPOSED RULE

<table>
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<th>TYPE OF RULE: Amendment</th>
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<td>Utah Admin. Code Ref (R no.):</td>
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<td>Filing ID</td>
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Agency Information

1. Department: Health
2. Agency: Health Care Financing, Coverage and Reimbursement Policy
3. Building: Cannon Health Building
4. Street address: 288 N 1460 W
5. City, state and zip: Salt Lake City, UT 84116
There is no impact on non-small businesses as this change neither affects member services nor rates of reimbursement.

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

There is no impact on Medicaid providers and Medicaid members as this change neither affects member services nor rates of reimbursement.

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 impact on a single Medicaid provider or Medicaid member as this change neither affects member services nor rates of 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 costs nor revenue as service and reimbursement remain the same. Nate Checketts, 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.)

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Fiscal Information

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

A) State budget:

There is no impact to the state budget as this change neither affects member services nor rates of reimbursement.

B) Local governments:

There is no impact on local governments because they neither fund nor provide physician services under the Medicaid program.

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

There is no impact on small businesses as this change neither affects member services nor rates of reimbursement.

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

This amendment removes provisions that require the supervision of a physician. It also clarifies that physician assistants may bill independently, and that limitations or exclusions that apply to physicians no longer apply to physician assistants. It also makes other technical changes.
"Physician services", whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services performed by a Medicaid provider that meet the following standards:

(a) [S]ervices are performed within the scope of the physician's license as defined in Title 58, Occupations and Professions;

(b) [S]ervices are performed by a doctor of medicine or osteopathy, a doctor of dental surgery or of dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, or;

(c) [S]ervices include medical care, or any other type of remedial care furnished by licensed practitioners.

(4) "Practice as a physician assistant" means:

(a) acting as an agent of the supervising physician, and

when under the authority of a substitute supervising physician, acting in accordance with a delegation of services agreement, and

(b) a) performing professional duties within the conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, pursuant to Title 58, Chapter 70a, Utah Physician Assistant Act.

(5) "Services" means the types of medical assistance specified in Subsection 1905(a) of the Social Security Act and interpreted in 42 CFR 440.
is not covered for any of the reasons specified in [Section R414-105] this section, or due to policy exclusion; and

(ii) [P]aternity tests

(iii) [A]lcoholism or drug dependency in an inpatient setting, [see pursuant to Subsection R414-2A-7(ii)(f)].

(f) A physician assistant who works under the supervision of a physician, or as a staff member of a facility, is not an independent practitioner and cannot bill independently.

(iii) Service limitations or exclusions that apply to a physician shall also apply to the physician assistant.

(iv) Only a licensed physician may perform the specialty medical services of an assistant surgeon that include complex surgical procedures, while a physician assistant may neither perform specialty medical services nor assist in a surgical procedure.

(v) Medicaid, as it considers necessary, may apply exceptions to the duties of a supervised physician assistant in rural areas or in federally-designated health professional shortage areas.

(2) Family Planning Services.

(a) Medicaid does not cover the following family planning services:

(i) [S]urgical procedures for the reversal of previous elective sterilization on both males and females;

(ii) [H]infertility studies;

(iii) [IVF]-in-vitro fertilization;

(iv) [A]rtificial [I]nservation; and

(v) [S]urrogate motherhood, including [all] services, tests, and related charges.

(3) Anesthesia.

(a) Medicaid may only cover anesthesia services performed by a licensed, qualified provider.

(b) Medicaid does not cover anesthesia standby services.

(4) Surgical Services.

(a) Surgical procedures.

(i) [G]lobal surgical services. Global services include Medicaid covers the following surgical global services and procedures:

1. Preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the physician's office on the same day as hospital admission;

2. The operation;

3. Any topical, local, or regional anesthesia; and

4. The normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure.

(ii) Interpretation of "global" services. The following criteria apply to global services:

1. A physician may not bill for an office visit the day before surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a [5] global [2] surgical service;

2. Only the consulting physician may bill for consultation services when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, the consulting physician may only use admission codes and subsequent care codes;

3. If office visits after hospitalization that relate to the same diagnosis are part of the global service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(iii) Complications, exacerbations, recurrence, or the presence of other diseases or injuries, which require services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(iv) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(v) Preoperative examination and planning are covered as separate services only under the following circumstances:

1. When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis to determine the need for a specific surgical procedure, or to prepare the patient;

2. When the preoperative visit is a consultation and the consulting physician does not assume care of the patient;

3. When diagnostic procedures are not part of the basic surgical procedure.

(5) Maternity Care and Delivery.

(a) Medicaid does not cover early elective delivery, whether vaginal or caesarean, before 39 weeks.

(b) Medicaid covers [T]he following references apply to abortion, sterilization, and hysterectomy:

1. [S]terilization and [H]ysterectomy procedures must meet the requirements of 42 CFR 441, Subpart F.

2. Organ transplant services must meet the requirements of Rule R414-10A.

(c) Medicaid may cover [T]he following psychiatric services [may be covered] as a medical benefit:

1. Physician-ordered psychiatric services for a patient hospitalized in a non-psychiatric unit of a hospital;

2. Mental health services that target the diagnosis or treatment of developmental disability or organic disorder; and

3. Psychosocial evaluations requested before organ transplantations, psychiatric evaluations before other medical services or surgical procedures, and evaluations for individuals with conditions that require chronic pain management services.

(d) Medicaid covers the following pain management services:


2. [P]ain management for delivery and acute post-operative pain;


(6) Medicine.

(a) Medicaid may cover [T]he following medications subject to the requirements of Rule R414-60.

KEY: Medicaid
Date of Last Change: 2021[July 4, 2017]
Notice of Continuation: October 24, 2016
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3
NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R414-200-3  Filing ID 53954

Agency Information
1. Department: Health
Agency: Health Care Financing, Coverage and Reimbursement Policy
Building: Cannon Health Building
Street address: 288 N 1460 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 143102
City, state and zip: Salt Lake City, UT 84114-3102

Contact person(s):
Name: Craig Devashrayee  Phone: 801-538-6641  Email: cdevashrayee@utah.gov

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

General Information
2. Rule or section catchline:
R414-200-3. Services Available

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to update the scope of practice for physician assistants as set forth in S.B. 27 passed during the 2021 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):
This amendment implements a provision in state law that allows physician assistants to render services as independent practitioners. It also makes other technical changes.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget as this change neither affects member services nor rates of reimbursement.

B) Local governments:
There is no impact on local governments because they neither fund nor provider physician services under the Medicaid program.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as this change neither affects member services nor rates of reimbursement.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no impact on non-small businesses as this change neither affects member services nor rates of reimbursement.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no impact on Medicaid providers and Medicaid members as this change neither affects member services nor rates of reimbursement.

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 impact on a single Medicaid provider or Medicaid member as this change neither affects member services nor rates of 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 costs nor revenue as service and reimbursement remain the same. Nate Checketts, 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.)

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UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19
Other Persons | $0 | $0 | $0
Total Fiscal Cost | $0 | $0 | $0
Fiscal Benefits | $0 | $0 | $0
State Government | $0 | $0 | $0
Local Governments | $0 | $0 | $0
Small Businesses | $0 | $0 | $0
Non-Small Businesses | $0 | $0 | $0
Other Persons | $0 | $0 | $0
Total Fiscal Benefits | $0 | $0 | $0
Net Fiscal Benefits | $0 | $0 | $0

B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Health, Nate Checketts, 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

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021
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
Agency head or designee, and title: Nate Checketts, Executive Director Date: 09/14/2021

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Non-Traditional Medicaid (NTM) Health Plan. 
(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid information, bulletins, and provider letters.
(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.
(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid (NTM) Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).
(3) The following services, as more fully described and limited in provider contracts, provider manuals, and administrative rules, are available to NTM Health Plan members:
(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;
(b) medically necessary outpatient hospital services that include diagnostic, therapeutic, preventive, or palliative care which are provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;
(c) emergency services in dedicated hospital emergency departments;
(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of a physician or osteopath;
(e) physician assistants may render services as independent practitioners pursuant to Title 58, Chapter 70a, Utah Physician Assistant Act;
(f) vision care services by licensed optometrists, within their scope of practice, limited to one annual eye examination or refraction and no eyeglasses;
(g) laboratory and radiology services provided by licensed and certified providers;
(h) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;
(i) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;
(j) hospice services provided by a Medicare-certified hospice to terminally ill members with a six-month or less life expectancy, who elect to receive palliative care instead of aggressive care;
(k) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;
(Hm) organ transplants, limited to kidney, liver, cornea, bone marrow, stem cell, heart, and lung transplants;
(mag) services provided in freestanding emergency centers, surgical centers and birthing centers;
(no) transportation services, limited to ground and air ambulance [ground and air service] for medical emergencies.[NTM does not cover non-emergency transportation (including bus passes)]
(p) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;
(pg) family planning services provided by or authorized by a physician, certified nurse midwife, or a physician assistant to the extent permitted by federal and state law, but not to include infertility drugs, in-vitro fertilization, and genetic counseling;
(ph) pharmacy services provided by a licensed pharmacy;
(s) inpatient mental health services;
(t) outpatient mental health services;
(u) outpatient substance abuse services;
(v) hearing evaluations or assessments for hearing aids.

NTM, however, will only cover hearing aids for congenital hearing loss;
(w) dental services as allowed in the Utah Medicaid State Plan, ATTACHMENT 3.1-A, Attachment #10;
(x) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;
(y) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to 16 aggregated physical or occupational therapy visits per calendar year; and
(z) occupational therapy services provided for fine motor development, limited to 16 aggregated physical or occupational therapy visits per year.
(4) NTM does not cover the following:
(a) chiropractic services;
(b) speech-language pathology services;
(c) long-term care;
(d) private duty nursing;
(e) non-emergency transportation; and
(f) bus passes.

KEY: Medicaid, non-traditional, cost sharing
Date of Last Change: 2021[October 10, 2019]
Notice of Continuation: May 5, 2017
Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R512-11 Filing ID 53908
Agency Information
1. Department: Human Services
Agency: Child and Family Services
Building: Multi Agency State Office Building

| Street address: | 195 N 1950 W |
| City, state and zip: | Salt Lake City, UT 84116 |
| Contact person(s): |
| Name: | Phone: | Email: |
| Carol Miller | 801-557-1772 | carolmiller@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |

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

General Information
2. Rule or section catchline:
R512-11. Accommodation of Moral and Religious Beliefs and Culture

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule filing is to bring the rule in-line with Executive Order No. 2021-12, issued by Utah’s Governor on May 6, 2021.

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 has been updated to ensure legal citations are accurate and to bring the rule in-line with the current Utah Rulewriting Manual.

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

A) State budget:
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

B) Local governments:
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the local governments.

C) Small businesses ("small business* means a business employing 1-49 persons):
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to 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):

The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, 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?):

There are no compliance costs for affected persons associated with implementing this rule because these changes are not fiscal in nature.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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.)

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

B) Department head approval of regulatory impact analysis:

The Executive Director of Human Services, Tracy Gruber, 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:

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<tr>
<td>62A-4a-102</td>
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<td>62A-4a-106</td>
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<td>Section 62A-4a-120</td>
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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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.

R512-11-1. Purpose and Authority.
(1) The purpose of this rule is to define procedures to accommodate the moral beliefs, religious beliefs, and culture of children and families served by the Division of Child and Family Services (Child and Family Services) according to Section 62A-4a-120.
(2) This rule is authorized by Section 62A-4a-102.

(1) "Accommodate" means to adapt, adjust, or make provision to support.
(2) "Utah Family and Children Engagement Tool", [hereinafter referred to as] ["UFACET"], means a document that is a collection of formal and informal assessments pertaining to the child and family identifying the strengths, resources, and needs of the family. The UFACET is a working document used to record information, draw conclusions, and inform the Child and Family Plan.
(3) "Child and Family Plan" means the collective intentions and plans of the child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, [and] parents, or guardians.
(4) "Child and Family Team" means a group that may consist of the child, the child's family, the Child and Family Services caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the Guardian ad Litem, the parents' attorney, the Attorney General, and other supportive individuals as designated by the family.
(5) "Culture" means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.
(6) "Moral beliefs" means ideas of what is right and what is wrong that shape one's outward behavior. Moral beliefs define what is decent and honorable.
(7) "Religious beliefs" means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

(1) Child and Family Services recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.
(2) When intervening with a family, Child and Family Services caseworkers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.
(3) Child and Family Services shall develop a Child and Family Team when engaging children and families.
(a) The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.
(b) The UFACET shall identify the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. The method that Child and Family Services will employ to make the accommodation or the reasons that such accommodation is not reasonable or proper shall be reflected in the Child and Family Team Meeting minutes or the Child and Family Plan.
(c) The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family Team Meeting minutes and reflected in the services and provisions made in the Child and Family Plan. Any accommodation that cannot be provided shall be explained to the child and family and noted in the Child and Family Plan.
(d) When Child and Family Services is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.
(e) These accommodations shall be periodically reviewed with the parents or caregivers, along with [all] other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the decisions made by the Child and Family Team.
(4) The planning and implementation of [all] other activities provided by Child and Family Services shall identify in the Child and Family Team Meeting minutes aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method Child and Family Services employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

KEY: child welfare

Date of Last Change: 2021[October 02, 2016]
Notice of Continuation: May 19, 2020

Authorization, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-106; 62A-4a-120
General Information

2. Rule or section catchline:
R512-32. Children with Reportable Communicable Diseases

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule filing is to bring the rule in-line with Executive Order No. 2021-12, issued by Utah's Governor on May 6, 2021.

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 has been updated to ensure legal citations are accurate and to bring the rule in-line with the current Utah Rulewriting Manual.

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 because the changes just update and make corrections to the existing rule text and do not change procedures for working with children with communicable diseases.

B) Local governments:
There are no anticipated costs or savings to local governments because the changes just update and make corrections to the existing rule text and do not change procedures for working with children with communicable diseases.

C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings to small businesses because the changes just update and make corrections to the existing rule text and do not change procedures for working with children with communicable diseases.

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 changes just update and make corrections to the existing rule text and do not change procedures for working with children with communicable diseases.

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 because the changes just update and make corrections to the existing rule text and do not change procedures for working with children with communicable diseases.

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 associated with implementing this rule because these changes are not fiscal in nature.

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 cost to businesses. Tracy Gruber, 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.)

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"Child and Family Services" means the Division of Human Services, Child and Family Services.

R512-32-1. Purpose and Authority.
(1) [The purpose of this rule is to] establishes standards for confidentiality and testing of children with reportable communicable diseases.
(2) This rule is authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services. (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(1) "AIDS" means acquired immunodeficiency syndrome.
(4)(2) "Child and Family Services" means the Division of Child and Family Services.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person, including DOH personnel, who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include] Child and Family Services administrators, program administrators, supervisors, and caseworkers, the foster parent or provider, LH|DOH, the Guardian ad Litem, the

(1) Testing at [A]agency's [R]request,[j]

(a) [Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of Child and Family Services. When Child and Family Services has custody and guardianship of a child who may have a communicable disease, the state has the authority to obtain a medical evaluation to determine the child's communicable disease status[.]

(b) [If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker[.]

(c) [If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact [L]DOH promptly for consultation[.]

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high-risk behaviors as defined in R512-32-18(5), a child who may be at risk as defined in R512-32-1(9), or medical information received by the caseworker, foster parent, or provider.

(e) [Communicable disease testing requires written, informed consent[.]]

(f) [If Child and Family Services has custody and guardianship of a child, Child and Family Services has the authority to provide written, informed consent for communicable disease testing[.]

(g) [A child under the custody and guardianship of Child and Family Services refuses to be tested, the caseworker is required to contact [L]DOH, the local health department, and the Attorney General's office immediately upon hearing of the refusal[.]

(h) [When a parent of a child in the custody of Child and Family Services is known or reports to be involved in high risk behaviors, the caseworker shall contact [L]DOH for consultation[.]

(i) [All contacts with [L]DOH shall be documented in the child's case record and filed under the "Medical/Assessment" section of the case record.


(a) [A minor may seek HIV testing without parental or [L]DHS consent[.]

(b) [When the minor requests the test, the right to disclose test results belongs to the minor in accordance with [6]Section 26-6-18(1)[.]

(i) [If the minor chooses to disclose the test results to [L]DHS, [L]DHS cannot disclose the test results to any other person, including the Guardian [A]d [L]item[.]

(ii) [L]DHS may disclose to the Guardian of a positive test result, the caseworker shall contact [L]DOH for consultation and follow up[.]

and

(iii) [A minor's request for HIV testing is subpoeanaed, the caseworker shall immediately contact the Attorney General's office or the Child and Family Services program administrator or deputy director.

R512-32-5. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering that a child has a communicable disease, the caseworker, in collaboration with the Fostering Healthy Children [RN]urses, will contact the [L]local [H]ealth [D]epartment [LHD] in their area for consultation to define the precautions necessary to mitigate any health risks to others.

(2) After consultation with the [LHD]local health department and prior to placing the child, the caseworker shall hold a professional staffing, including the child's primary care medical provider [as defined in R512-32-1, Definitions], to identify the best placement to meet the child's needs.

(3) Once a placement is identified, a Child and Family Team Meeting will be held to address the child's health issues and make sure the caregiver is willing to participate in maintaining the safety of [all]everyone involved. Additional education and training will be provided as necessary.


(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to [L]DOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in [his or her] the provider's file, as well as the child's case record under the "Medical/Assessment" section of that record.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in Subsections R512-32-5(1) and R512-32-5(2) shall be accomplished without delay.


(1) [Pick-up orders]Warrants for runaway and missing youth filed with the [J]uvenile [C]ourt may state that the youth is engaging, or has a history of engaging, in [H]igh [R]isk [B]ehaviors. The [order]warrant or supplementary [forms]documents cannot include information that the child has or may have a communicable disease.


(1) If a minor is returned to the parent's custody, the parent is responsible for informing the child of the disease and what precautions need to be taken to prevent the disease from being transmitted to others.

(2) If a minor is returned to the parent's custody, both the parent and the child are responsible for following the guidelines set forth by the [L]DHS [D]epartment for prevention and control of communicable diseases.
R512-32-9. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive for a Communicable Disease.

[4]\—\When a minor in the custody of Child and Family Services is identified by [U]DOH as having been exposed to a person who has tested positive for a communicable disease, [U]DOH shall contact the Child and Family Services program administrator or deputy director who shall then contact the appropriate caseworker. The caseworker shall contact [U]DOH to arrange for the minor to be tested and counseled. The caseworker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
Date of Last Change: 2021[May 27, 2009]
Notice of Continuation: October 13, 2016
Authorizing, and Implemented or Interpreted Law: 62A-4a-105; 63G-2[-304]; 26-6-18; 26-6-27

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

A) State budget:
There will be no increase in cost or savings to the state budget because these proposed changes do not increase nor decrease workload that would require additional staff or other costs.

B) Local governments:
Local governments have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses have no responsibility for services offered by Child and Family Services and are therefore, not affected by this rule and will have no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
Persons other than small businesses, non-small businesses, state, or local government entities have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to 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):
After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, Executive Director

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

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Net Fiscal Benefits

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B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Human Services, Tracy Gruber, 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:

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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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Tracy Gruber, Executive Director Date: 09/07/2021


R512-42. Adoption by Relatives.

R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of Child and Family Services.

(2) This rule is authorized by Sections 62A-4a-102, 78A-6-307, 78B-6-128, and 78B-6-133.


(1) “Child and Family Services” means the Division of Child and Family Services.

(2) “Relative” is defined in Section 78A-6-307.

R512-42-3. Adoption by Relatives.

(1) A relative who has a relationship with a child in state’s custody who may become available for adoption may apply to adopt a particular child.

(2) The application and adoptive evaluation (commonly called a home study) will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with R512-41 and Sections 78B-6-128 and 78B-6-133, based upon the best interest of the child.

(a) Any preferential consideration of a relative defined in Section 78A-6-306 for the initial placement of a child in state’s custody expires in 120 days of the shelter hearing.

(b) When a relative, as set forth in Section 78B-6-133, who has a significant and substantial relationship with the child, and who was not aware or did not come forward within 120 days, comes forward when a child in state’s custody has a permanency goal of adoption, the long-term needs of the child to have connection with family will be a consideration as long as the relative has the ability to meet the long-term physical, emotional, cognitive, and special needs of the child.

(3) When the 120-day time period for preferential consideration for a relative of a child in custody expires, the court can grant a hearing to a petitioner that meets the following criteria.
(a) A relative who did not come forward in the first 120 days; if:
   (i) they have a significant and substantial relationship with the child; and
   (ii) the child is with another relative who is unable or unwilling to adopt the child; and
   (iii) they were unaware the child was in foster care; and
   (iv) they filed a written statement with the court within 30 days of reunification services being terminated to express the intent to assume full custody and adopt the child.
(b) The petitioner's home is where the child is placed.
(c) The petitioner's home is where the child has resided for six months.
(d) If the child:
   (i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; and
   (ii) is placed with, or is in the custody or guardianship of, an individual who previously informed Child and Family Services or the court that the individual is unwilling or unable to adopt the child.

KEY: adoption
Date of Last Change: November 21, 2019
Notice of Continuation: October 13, 2016
Authorizing and Implemented or Interpreted Law: 62A-4a-102; Notice of Continuation: October 13, 2016
Date of Last Change: November 21, 2019
KEY: adoption

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

The Division of Substance Abuse and Mental Health (Division) is repealing this rule because the Utah State Hospital (USH) has a much more detailed policy on patients’ rights. The Division currently uses a general rulewriting authority to enforce these requirements, but there is no specific statutory requirement for this rule.

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 rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

This rule outlined procedural requirements pertaining to patient rights at the USH. The contents of this rule will continue to be enforced through policy and procedure, and there are no financial obligations are associated with these requirements; therefore, no budgetary costs or savings are associated with this repeal.

B) Local governments:

This rule outlined procedural requirements pertaining to patient rights at the USH. Local governments do not participate in or enforced patient rights, so are no financial obligations are associated with these requirements that would be passed onto the local authorities. No budgetary costs or savings to local governments are associated with this repeal.

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

Small businesses do not operate or provide treatment within the USH and are not affected by this rule, so no budgetary costs or savings are associated with this repeal.

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

Non-small businesses do not operate or provide treatment within the USH, and are not affected by this rule, so no budgetary costs or savings are associated with this repeal.

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):

No other persons are affected by this rule other than patients at the USH, and they are not required to pay an additional cost to have claim on any of their rights as
patients at the USH, so no costs or savings are associated with this repeal.

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

The procedural requirements pertaining to patient rights have no associated financial obligations to enforce; therefore, no compliance costs are associated with this repeal.

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 proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, 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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Tracy S. Gruber, 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:

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A) Comments will be accepted until: 11/01/2021

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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

| Agency head or designee, and title: | Tracy Gruber, Executive Director | Date: 09/07/2021 |

R525. Human Services, Substance Abuse and Mental Health, State Hospital.


R525-2-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain patient rights for patients at the Utah State Hospital.


Patients, and when appropriate, family members are informed of their rights and the means by which these rights are protected and exercised.


Patients, and when appropriate, family members have their admission status explained to them and to have the provisions of the law pertaining to their admission.
______ A written, dated, and signed consent form is obtained from the patient, and when appropriate, the patient's family or legal guardian for participation in research projects and for use or performance of:
1. electroconvulsive therapy;
   2. unusual medications;
   3. audiovisual equipment;
   4. other procedures where consent is required by law.

R525-2-5. Patient Advocate.
______ A Hospital Patient Advocate is provided to assist patients and, when appropriate family members, and direct their concerns to the appropriate person/agency.

R525-2-6. Patient May Deny Family Members Access to Treatment Information.
______ Adult patients, who do not have a court-appointed legal guardian, may exclude family members from their treatment information.

KEY: patient rights
Date of Last Change: February 21, 2012
Notice of Continuation: January 16, 2018
Authorizing, and Implemented or Interpreted Law: 62A-15-105

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal
Utah Admin. Code Ref (R no.): R525-3 Filing ID 53933

Agency Information

1. Department: Human Services
   Agency: Substance Abuse and Mental Health, State Hospital
   Room no.: Second Floor
   Building: Multi Agency State Office Building
   Street address: 195 N 1950 W
   City, state and zip: Salt Lake City, UT 84116
   Contact person(s):
   Name: Thom Dunford
   Phone: 801-538-4181
   Email: tdunford@utah.gov
   Name: Jonah Shaw
   Phone: 801-538-4219
   Email: jshaw@utah.gov

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

General Information

2. Rule or section catchline:
   R525-3. Medication Treatment of Patients

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
   The Division of Substance Abuse and Mental Health (Division) is repealing this rule because the Utah State Hospital (USH) has a much more detailed policy on patients' rights when medication is recommended as part of the treatment regimen. The Division currently uses a general rulewriting authority to enforce these requirements, but there is no specific statutory requirement for this rule.

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 is repealed in its entirety.

Fiscal Information

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

   A) State budget:
   This rule outlined procedural requirements pertaining to provision of medication treatment to patient at the USH. The contents of this rule will continue to be enforced through policy and procedure, and there are no financial obligations are associated with these requirements; therefore, no budgetary costs or savings are associated with this repeal.

   B) Local governments:
   This rule outlined procedural requirements pertaining to providing medication treatment to patient. Local governments do not participate in or enforce the right to refuse medication as part of a treatment plan for patients in the USH, so financial obligations are not associated with these requirements. No budgetary costs or savings to local governments are associated with this repeal.

   C) Small businesses ("small business" means a business employing 1-49 persons):
   Small businesses do not operate or provide treatment within the USH and are not affected by this rule, so no budgetary costs or savings are associated with this repeal.

   D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
   Non-small businesses do not operate or provide treatment within the USH and are not affected by this rule, so no budgetary costs or savings are associated with this repeal.

   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 only persons affected by this rule are patients at the USH. Patients are not required to pay an additional cost for the acceptance or refusal to receive medications as part of their treatment regimen, so no costs or savings are associated with this repeal.

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

The procedural requirements pertaining to providing medication treatment to patients have no associated financial obligations to enforce; therefore, no compliance costs are associated with this repeal.

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 proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, 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.)

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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) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Tracy S. Gruber, 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 62A-15-105

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Tracy Gruber, Executive Director | Date: 09/07/2021 |

R525. Human Services, Substance Abuse and Mental Health, State Hospital.


(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to provide guidance on the medication treatment of patients as required by Subsections R432-101-14(3) and R432-101-24(3).

R525-3-1. Authority and Purpose.

Utah State Hospital (USH) offers medication as part of treatment for patients.

R525-3-2. Medication as Part of Treatment.

Patients have the right to refuse medication treatment.
R525-3-4. Clinical Medication Review.  
In the event that a patient refuses medication treatment, USH staff shall constitute a medical review committee to determine if medication treatment is clinically indicated as part of the patient's treatment.

R525-3-5. Patient/Legal Guardian Shall Attend Review.  
The patient/legal guardian shall be afforded the opportunity to attend the review and address the issue of medication treatment.

R525-3-6. Medication Review Committee to Render a Decision.  
The medication review committee shall render a decision with respect to whether medication is a requirement of treatment and shall inform the patient/legal guardian of that decision.

R525-3-7. The Patient May Appeal the Decision.  
The patient/legal guardian shall be afforded the opportunity to appeal any decision and have the case reviewed by the Hospital Clinical Director/designee.

R525-3-8. Hospital Clinical Director/Designee Shall Review the Case.  
The Hospital Clinical Director/designee shall review the appeal and render a decision with respect to whether or not the patient is required to take medication as part of their treatment.

R525-3-9. Periodic Reviews.  
Patients medicated pursuant to a medication review are periodically evaluated to determine if medication treatment continues to be a requirement of their treatment.

R525-3-10. Medication Treatment of Minors.  
Medication treatment of minor children is conducted only in agreement with the child and the parent/legal guardian.

R525-3-11. Electroconvulsive Therapy.  
Electroconvulsive therapy is provided upon consent of the patient/legal guardian and may be provided by other hospitals that are equipped and staffed to provide safe and effective electroconvulsive therapy and recovery.

KEY: medication treatment

Date of Last Change: February 21, 2012
Notice of Continuation: January 16, 2018
Authorizing, and Implemented or Interpreted Law: 62A-15-105; R432-101-14(3); R432-101-24(3)]
are not charged a fee to visit with their clients that are receiving treatment at the USH, so no financial obligations are associated with these requirements; therefore, no budgetary costs or savings are associated with this repeal.

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

Small businesses affected by this rule are religious organizations and legal counsel, but there are no financial costs passed on to enforce this rule; therefore, repealing this rule will not pass on any costs or savings. These requirements will continue to be enforced through policy and procedures.

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

Non-small businesses affected by this rule are religious organizations and possibly legal counsel from a large law firm, but there are no financial costs passed on to enforce this rule; therefore, repealing this rule will not pass on any costs or savings. These requirements will continue to be enforced through policy and procedures.

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

Other persons affected by this rule include spiritual advisors not associated with an organized religious group, family members, friends, and patients. The rights and obligations in this rule are maintained through policy and procedure, and there are currently no costs to enforce these requirements; therefore, no financial costs or savings are associated with this repeal.

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

The procedural requirements pertaining to visitors at the USH have no associated financial obligations to enforce; therefore, no compliance costs are associated with this repeal.

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 proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, 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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Tracy S. Gruber, 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 62A-15-105

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: 11/01/2021
R525. Human Services, Substance Abuse and Mental Health, State Hospital.

R525-4-1. Authority and Purpose.
   (1) This rule is adopted under the authority of Section 62A-15-105.
   (2) The purpose of this rule is to provide guidance on the visitation of patients at the Utah State Hospital.

R525-4-2. Patients May Have Visitors.
   With the approval of the patients and their clinical treatment team, the patient's family, friends, and others may visit patients at the Utah State Hospital (USH).

R525-4-3. Clergy and Legal Counsel.
   With respect to clergy and/or legal counsel visiting patients, the hospital abides by Subsection 62A-15-641(3).

R525-4-4. Visits May Be Denied or Limited.
   A physician may deny or limit a visit for safety, security, and/or therapeutic reasons.

R525-4-5. Visiting Minors.
   Persons desiring to visit minors must obtain approval from the parent/legal guardian and the unit clinical staff.

R525-4-6. Visiting Hours Are Posted.
   Each treatment unit shall post their visiting hours in an area that is accessible by the public.

R525-4-7. Visitor Slip.
   Upon arrival at USH, visitors must obtain a "visitor slip" from the switchboard located in the Heninger Administration Building.

R525-4-8. Visitor Slips Are Present Upon Arrival at Unit.
   The visitor presents the visitor slip and proper identification upon arrival to the unit.

   Visitors desiring to bring gift items are required to obtain clearance from the patient's treatment team prior to bringing the gift/item on the unit.

KEY: visitors
Date of Last Change: November 7, 2013
Notice of Continuation: January 16, 2018
(USH) campus and makes stylistic changes that are compliant with the the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The nonsubstantive changes to this rule will have no budgetary costs or savings to state agency budgets. The use of the storage lockers associated with this rule are free to all visitors that are required to use them, and the current enforcement of this rule has not changed due to the edits in this submission.

B) Local governments:

The nonsubstantive changes to this rule will have no budgetary costs or savings to local governments. The use of the storage lockers associated with this rule are free to all visitors that are required to use them, and the current enforcement of this rule has not changed due to the edits in this submission. Local governments affected by this rule are all city and county public safety agencies, local mental health authority staffs, and any city or county employees that are on the USH campus in the official capacity as representatives of those political subdivisions.

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

The nonsubstantive changes to this rule will have no budgetary costs or savings to small businesses. The use of the storage lockers associated with this rule are free to all visitors that are required to use them, and the current enforcement of this rule has not changed due to the edits in this submission. Small business affected by this rule are religious organizations, private attorney's offices, and private forensic evaluators.

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

The nonsubstantive changes to this rule will have no budgetary costs or savings to non-small businesses. The use of the storage lockers associated with this rule are free to all visitors that are required to use them, and the current enforcement of this rule has not changed due to the edits in this submission. Non-small businesses affected by this rule are religious organizations, and possibly large private attorney's offices.

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

Other persons affected by this rule include anyone who would be associated with the USH including patients and their family members, friends, and associates, as well as the community at large, special interests groups, and practicum students from colleges throughout the state. The nonsubstantive changes to this rule will have no budgetary costs or savings to non-small businesses. The use of the storage lockers associated with this rule are free to all visitors that are required to use them, and the current enforcement of this rule has not changed due to the edits in this submission.

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

The procedural requirements pertaining to prohibited items and devices at the USH have no associated financial obligations to enforce; therefore, no compliance costs are associated with this amendment.

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 proposal will not result in a fiscal impact to businesses.

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.)

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R525. Human Services, Substance Abuse and Mental Health, State Hospital.

R525-6. Prohibited Items and Devices.

R525-6-1. Authority and Purpose.

(1) This rule is adopted under Sections 62A-15-105, 62A-15-603 and Subsections 76-8-311(2)(a) and 76-8-311.3(2). This rule establishes secure areas on the Utah State Hospital (USH) campus, and procedures for securing prohibited items and devices as authorized by Subsection 76-8-311.3(2).

(2) This rule establishes secure areas on the Utah State Hospital (USH) campus, and procedures for securing prohibited items and devices. This rule is promulgated under authority of section 62A-15-105.

R525-6-2. Establishment of Secure Areas.

[11] Pursuant to Subsections 62A-15-603(3) and 76-8-311.3(2), the following buildings of the Utah State Hospital (USH) are established as secure areas:

[11a][1] Forensic Mental Health Facility;

[11b] Lucy Beth Rampton Building;

[11c] Mountain Springs Pediatric Building; and

[11d] any building on the Utah State Hospital (USH) campus erected to replace or expand the capacity of these buildings, and/or exist to perform similar functions of these buildings identified in this rule.

R525-6-3. Items and Devices Prohibited from Secure Areas.

[11] Pursuant to Subsections 76-8-311.1(2)(a) and 76-8-311.3(2), all weapons, contraband, controlled substances, ammunition, items that implement escape, explosives,精神 or fermented liquors, firearms, or any devices that are normally considered to be weapons are prohibited from entry beyond the secure storage lockers in the foyers of each building identified in this rule.

R525-6-4. Storage of Prohibited Items and Devices.

[11] The public is notified of the availability of secure storage lockers at the entrance of the Utah State Hospital (USH) campus. Directions for use of the storage lockers are provided at or near the entrance of each of the buildings identified in this rule.

KEY: weapons, state hospital, secure areas, prohibited items and devices

Date of Last Change: 2021-02-24
Notice of Continuation: January 16, 2018
Authorizing, and Implemented or Interpreted Law: 62A-15-603(3); 62A-15-105; 76-8-311.1(2)(a); 76-8-311.3(2)
General Information

2. Rule or section catchline:
R525-8. Forensic Mental Health Facility

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Division of Substance Abuse and Mental Health (Division) is submitting these amendments to meet the mandates of the governor’s Executive Order No. 2021-12 entitled “Establishing Effective Oversight Over State Agency Rulemaking”, with the stated goal of having agencies write “clear, cohesive, and concise administrative rules” that serve the public. Also, the Utah State Hospital (USH) is under a settlement agreement that attempts to mitigate concerns that individuals who are ordered forensic services.

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 will:
1) remove language referring to the purpose of the USH forensic mental health facility that repeats statute;
2) make stylistic changes that are compliant with the State’s rule writing manual; and
3) remove language that limits capacity to provide court ordered forensic services.

Fiscal Information

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

A) State budget:
The changes to this rule will have no budgetary costs or savings to state agency budgets, and do not change the way or amount of individuals who are normally seen and treated in the USH forensic mental health unit.

B) Local governments:
The changes to this rule will have no budgetary costs or savings to local governments. Individuals that are not seen in the USH forensic mental health unit have been, and will continue to be, treated by outreach teams in jail based units, and this practice will continue.

C) Small businesses (“small business” means a business employing 1-49 persons):
Small businesses are not part of the forensic mental health treatment process in Utah, so no budgetary cost or savings will be affected by these changes.

D) Non-small businesses (“non-small business” means a business employing 50 or more persons):
Non-small businesses are not part of the forensic mental health treatment process in Utah, so no budgetary cost or savings will be affected by these changes.

E) Persons other than small businesses, non-small businesses, state, or local government entities (“person” means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
Other persons are not part of the forensic mental health treatment process in Utah, so no budgetary cost or savings will be affected by these changes.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
This rule outlines the criteria for admission into the USH forensic mental health facility, and no cost is associated with those criteria.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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.)

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R525. Human Services, Substance Abuse and Mental Health, State Hospital.

R525-8. Forensic Mental Health Facility.

R525-8-1. Authority and Purpose.
(1) This rule is adopted under the authority of Sections 62A-15-105 and 62A-15-603.

(2) This rule [is to] explain the criteria for admission to beds for the [F]orensic [M]ental [H]ealth [F]acility at the Utah State Hospital (USH).

R525-8-2. Forensic Mental Health Facility.
(1) Pursuant to the requirements of Section 62A-15-902(2)(c), the forensic mental health facility allocates admits individuals in accordance with state statute as follows:

(a) persons found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, or not guilty by reason of insanity under Title 77, Chapter 14;

(b) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a;

(c) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a, who are also intellectually disabled;

(d) prison inmates necessitating treatment in a secure mental health facility in accordance with Section 77-16a-202, 203, 204 and in Section 62A-15-605.5, and

(e) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or his designee.

(2) Additionally, the beds serve the following categories:

(a) persons undergoing an evaluation to determine competency to proceed under Title 77, Chapter 15; and

(b) persons committed to the state hospital as a condition of probation under Subsection 77-18-1(13).

(3) The Executive Director of the Department of Human Services (DHS) or their designee may allocate resources to provide competency restoration services and/or treatment for the purpose of competency restoration to those ordered to the custody of the Department of Human Services.

People are identified for admission to the forensic mental health facility based on current psychiatric need, legal status and the date of their court order into the Department of Human Services custody. Highest priority shall be given to those cases which are specifically required to be admitted to the [Utah State Hospital] USH by Utah law.

R525-8-4. No Admission Because of Capacity.
When capacity in the forensic mental health facility has been met, the hospital shall not admit any persons to the forensic mental health facility until a bed becomes available. In such an event the hospital will work cooperatively with the court to find a resolution.

KEY: forensic, mental health, facilities

Date of Last Change: 2021[July 13, 2016]

Notice of Continuation: April 5, 2021

NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

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**Agency Information**

1. **Department:** Human Services
2. **Agency:** Recovery Services
3. **Street address:** 515 E 100 S
4. **City, state and zip:** Salt Lake City, UT 84102-4211
5. **Mailing address:** PO Box 45033
6. **City, state and zip:** Salt Lake City, UT 84145-0033
7. **Name:** Casey Cole
8. **Phone:** 801-741-7523
9. **Email:** cacole@utah.gov
10. **Name:** Jonah Shaw
11. **Phone:** 801-538-4225
12. **Email:** jshaw@utah.gov

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

**General Information**

2. **Rule or section catchline:** R527-34. Non-IV-A Services

3. **Purpose of the new rule or reason for the change**
   (Why is the agency submitting this filing?):
   Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Office of Administrative Rules’ Rulewriting Manual.

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 is being amended to meet the standards found in the Administrative Rules’ Rulewriting Manual, pursuant to Executive Order No. 2021-12.

**Fiscal Information**

5. **Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**
   **A) State budget:**
   The amendment to this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

6. **B) Local governments:**
   The amendment to this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

7. **C) Small businesses** (“small business” means a business employing 1-49 persons):
   The amendment to this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

8. **D) Non-small businesses** (“non-small business” means a business employing 50 or more persons):
   The amendment to this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

9. **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 amendment to this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

10. **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 associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

11. **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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

12. **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.)
R527-34. Non-IV-A Services.
R527-34-1. Authority and Purpose.
[1] The Department of Human Services is authorized to create rules necessary for the provision of social services by the Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107. This rule incorporates by reference 45 CFR 302.33 (June 9, 2020).
[2] The purpose of this rule is to outline the services that ORS will provide to non-IV-A recipient[s] of child support services.

R527-34-2. Non-IV-A Services Provided by ORS.
[1] ORS will provide the following services to a non-IV-A recipient[s] of child support services:
[a.] attempt to locate the obligor;
[b.] attempt to collect the current child support amount;
[c.] attempt to collect past due child support [which is owed on behalf of a child, regardless of whether the child is a minor];
[d.] attempt to enforce court ordered spousal support if the minor child of the parties resides with the obligee and ORS is enforcing the child support order;
[e.] [ORS will only continue] attempt to collect spousal support after the youngest child has emancipated if:
[i.] income withholding is already in effect for the collection of child support; and,
[ii.] the emancipated child[ren] still resides with the obligee;

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

<table>
<thead>
<tr>
<th>Official Title of Materials Incorporated (from title page)</th>
<th>First Incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>45 CFR 302.33 – Services to individuals not receiving title IV-A assistance</td>
<td>45 CFR 302.33</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Section</th>
<th>CFR Reference</th>
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<tr>
<td>62A-11-107</td>
<td>45 CFR 302.33</td>
</tr>
</tbody>
</table>

Date Issued
June 9, 2020

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

A) Comments will be accepted until: 11/01/2021

10. This rule change MAY become effective on:

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

| Agency head or designee, and title: | Tracy Gruber, Executive Director | Date: 09/07/2021 |

Regulatory Impact Table

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<tr>
<th>Fiscal Cost</th>
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<th>FY2024</th>
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<tbody>
<tr>
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<tr>
<td>Local Governments</td>
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<tr>
<td>Small Businesses</td>
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<tr>
<td>Non-Small Businesses</td>
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<tr>
<td>Other Persons</td>
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<td>$0</td>
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<tr>
<td><strong>Total Fiscal Cost</strong></td>
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<tr>
<td><strong>Fiscal Benefits</strong></td>
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</tr>
<tr>
<td>State Government</td>
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<tr>
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<tr>
<td><strong>Total Fiscal Benefits</strong></td>
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<td><strong>$0</strong></td>
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<tr>
<td><strong>Net Fiscal Benefits</strong></td>
<td><strong>$0</strong></td>
<td><strong>$0</strong></td>
<td><strong>$0</strong></td>
</tr>
</tbody>
</table>

B) Department head approval of regulatory impact analysis:
The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.
NOTICES OF PROPOSED RULES

Contact person(s):

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jodi Witte</td>
<td>801-741-7417</td>
<td><a href="mailto:jwitte@utah.gov">jwitte@utah.gov</a></td>
</tr>
<tr>
<td>Casey Cole</td>
<td>801-741-7523</td>
<td><a href="mailto:cacole@utah.gov">cacole@utah.gov</a></td>
</tr>
<tr>
<td>Jonah Shaw</td>
<td>801-538-4225</td>
<td><a href="mailto:jshaw@utah.gov">jshaw@utah.gov</a></td>
</tr>
</tbody>
</table>

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

General Information

2. Rule or section catchline:
R527-303. Automatic Payment Withdrawal

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual.

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 is being amended to meet the standards found in the Administrative Rules' Rulewriting Manual, pursuant to Executive Order No. 2021-12.

Fiscal Information

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

A) State budget:
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

B) Local governments:
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

C) Small businesses (*small business" means a business employing 1-49 persons):
The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect...
D) Non-small businesses (“non-small business” means a business employing 50 or more persons):

The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, 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?):

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Cost</td>
</tr>
<tr>
<td>State Government</td>
</tr>
<tr>
<td>Local Governments</td>
</tr>
<tr>
<td>Small Businesses</td>
</tr>
</tbody>
</table>

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

B) Department head approval of regulatory impact analysis:

The Executive Director of Human Services, Tracy Gruber, 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 62A-1-111 | Section 62A-11-107 | Section 62A-11-703

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: 11/01/2021

10. This rule change MAY become effective on:

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.
NOTICES OF PROPOSED RULES


R527-303-1. Authority and Purpose.

[1][1] The Department of Human Services is authorized to create rules necessary for the provision of social services by [pursuant to Section 62A-1-111 and 62A-11-107]. [Pursuant to Subsection 62A-11-703(4).] The Office of Recovery Services [Child Support Services (ORS/CSS)] shall make rules specifying eligibility requirements to enter into alternative payment agreements (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

[2][2] Pursuant to Subsection 62A-11-703(6). ORS shall make rules specifying eligibility requirements for alternative payment agreements. The purpose of this rule is to specify how ORS/CSS will determine the eligibility of an obligor to make child support payments via automatic payment withdrawal from a bank account in lieu of income withholding.


[1][1] Pursuant to Section 62A-11-703, ORS/CSS may enter into an alternative payment agreement with an obligor [which] that provides for payment of child support via electronic funds transfer from the obligor's account at a financial institution in lieu of income withholding.

[2][2] To be eligible to enter into an alternative payment agreement with ORS/CSS, an obligor:

[a][a] must have a verified address in the Office of Recovery Services Information System;
[b][b] must not have been disqualified from using the alternative payment agreement in the last 12 months;
[c][c] may not be an obligor on an active outgoing intergovernmental case; and;
[d][d] may not have an active bankruptcy case.

[3][3] The ORS/CSS [Director or designee] may exercise discretion to terminate any agreement for abuse or cause.

KEY: child support, electronic funds transfer, automatic payment withdrawal
Date of Last Change: 2021 [February 10, 2020]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R539-10  Filing ID 53937

Agency Information
1. Department: Human Services
Agency: Services for People with Disabilities
Building: MASOB
Street address: 195 N 1950 W

City, state and zip: Salt Lake City, UT 84116
Contact person(s):
Name: Phone: Email:
Kelly Thomson 435-669-4855 kthomson@utah.gov
Jonah Shaw 801-538-4219 jshaw@utah.gov

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

General Information
2. Rule or section catchline:
R539-10. Short-Term Limited Waiting List Services

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is amended to comply with Executive Order No. 2021-12.

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):
Language was changed to conform to the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah and improve clarity.

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

A) State budget:
No anticipated cost or savings to the state budget. Changes to this rule do not alter program procedure.

B) Local governments:
No anticipated cost or savings to local governments. Local governments do not contribute funding to state disability services.

C) Small businesses ("small business" means a business employing 1-49 persons):
No anticipated cost or savings to small businesses. Small businesses do not contribute funding to state disability services.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
No anticipated cost or savings to non-small businesses. Non-small businesses do not contribute funding to state disability services.
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):

No anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities. Changes to this rule do not alter program procedure or funding.

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

No anticipated compliance costs for affected persons. Changes to this rule do not alter program access, procedure, or funding.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

### Regulatory Impact Summary Table

The table below provides a summary of the fiscal costs associated with the rule changes for various entities.

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<thead>
<tr>
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<td>Total Fiscal Cost</td>
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### Other Persons Fiscal Benefits

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### Net Fiscal Benefits

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<tr>
<td>Local Governments</td>
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<tr>
<td>Small Businesses</td>
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</tr>
<tr>
<td>Non-Small Businesses</td>
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<td>$0</td>
</tr>
</tbody>
</table>

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

The Executive Director of Human Services, Tracy Gruber, 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:

<table>
<thead>
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<th>Subsection</th>
<th>Section</th>
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<td>62A-5-102(7)</td>
<td>62A-5-103</td>
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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.)

| 10. A) Comments will be accepted until: |
| 11/08/2021 |

Agency Authorization Information

| Agency head or designee, and title: | Date: |
| Tracy Gruber, Executive Director | 09/07/2021 |

R539. Human Services, Services for People with Disabilities. R539-10. Short-Term, Limited Waiting List Services for the Waiting List.

R539-10-1. Purpose and Authority.

(1) The purpose of this rule is to establish a procedure and standard to determine eligibility for a person on the waiting list to receive a short-term, limited service from the division. (a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.

R539-10-2. Definitions.  
(1) Terms used in this rule are defined in Sections 62A-5-101 and R539-1-213.
(2) In addition:
   (a)2) "Active Status" means a person has a current [needs assessment]Need Assessment Questionnaire score and is on the Division's waiting list.
   (b)3) "Respite" is a service provided in a person's residence or other approved [residential]community-based setting, designed to give relief to or for use during the temporary absence of a person's primary caregiver.
   (4) "Service Brokering" means a community support that facilitates a person's and family's education and direction to community resources that are outside the scope of services paid for by the Department of Human Services or the division.

R539-10-3. Eligibility.
(1) A person is eligible for short-term limited waiting list services if:
   (a) the person is not receiving ongoing services with the Division;
   (b) the person is currently in active status on the Division's waiting list.
   A person is eligible for a short-term, limited service if the person does not receive an ongoing service through the division; and the person is in active status on the division's waiting list.

R539-10-4. Limitations.
(1) With the exception of Short-Term Limited Respite Care Services, funds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.
   (a) If there is no plan to use the funds or if the funds are unused, those funds will return to the Division and may be reallocated to another eligible person.
   (2) Funds granted for Short-Term Limited Respite Care Services must be used within 365 days of the date in which the plan is activated.
      (a) If funds are unused within 365 days of the date in which the plan is activated, those funds will return to the Division and shall be reallocated to another eligible person as set forth in Subsection R539-10-5(2)(e).
      (3) Funds may be withdrawn or reduced at any time and the establishment of a person's budget does not constitute an obligation for the Division to provide services or funding.
   (1) Any public funds granted by the division must be used by the person during the fiscal year in which the public funds are granted.
      (a) Any public funds unused by the person shall return to the division.
      (b) The division may reallocate any unused public funds to any other eligible person.
   (2) The division may withdraw or reduce public funds at any time. The establishment of a person's budget does not constitute an obligation for the division to provide a service or public funds.

R539-10-5. Selection for Short-Term Limited Respite Care Services.
(1) Non-lapse Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.
(2) If the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:
   (a) The Division shall identify all persons on the waiting list who have indicated that they are in need of respite services;
   (b) Persons identified by the Division as needing respite services, who had not been selected to receive respite services in the previous selection period, shall be grouped together, from which the Division shall use a random selection process to select persons to receive short-term limited respite care services.
   (c) If the Division determines that sufficient funds are available to provide additional short-term limited respite care services, after all persons who had not been selected to receive respite services during the previous selection period have been given an opportunity to receive short-term limited respite care services, the Division may use a random selection process to select persons to receive short-term limited respite care services from the remaining persons on the waiting list who have indicated that they are still in need of respite services regardless of whether the person had been selected previously.
   (d) A sibling of a person selected to receive short-term limited respite care services, at the discretion of the Division, may also be selected to receive short-term limited respite care services in the same selection period despite not being selected.
   (1) The division identifies if public funds are available to provide a short-term, limited respite service for an eligible person.
   (2) Except as described in Subsections R539-10-5(2)(d) and R539-10-5(3), the division shall use the following method to select a person on the waiting list that indicates a need for a respite service:
      (a) The division shall identify each person that did not receive a short-term, limited respite service during the previous fiscal year.
      (b) The division shall use random selection to offer a short-term, limited respite service to a person identified in Subsection R539-10-5(2)(a) until the public funds are allocated.
      (c) If the division is unable to allocate the total amount of public funds to a person identified in Subsection R539-10-5(2)(a), then the division shall use random selection to offer a short-term, limited respite service to any other person on the waiting list that indicates a need for a respite service.
      (d) The division may offer a short-term, limited respite service to a sibling of a selected person even if the sibling is not selected through the process described in Subsection R539-10-5(2).
   (3) [Notwithstanding the foregoing.—] The Division Emergency Services Management Committee (ESMC) may select an eligible person [on the waiting list] to receive a short-term, limited respite care [care/service(s)], if the ESMC determines that [short-term limited respite care]the service[s] are appropriate to address the person's emergency circumstance[s] faced by the person.

R539-10-6. Short-Term Limited Respite Care Provider Options.
(1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.
(2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:
   (a) the person must select a fiscal agent, through which all payments to employees must be made;
R539-10-7. Short-Term Limited Service Brokering Services.

(1) Non-lapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.

(2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

(1) The division determines if public funds are available to provide short-term, limited service brokering to an eligible person.

(2) The division selects a person to receive short-term limited service brokering based on need. The division uses information supplied by the person to determine need.

KEY: waiting lists, family preservation, respite, service brokering

Date of Last Change: 2021[October 11, 2017]

Notice of Continuation: December 11, 2018


NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-85 Filing ID 53927

Agency Information

1. Department: Insurance

   Agency: Administration

   Room no.: Suite 2300

   Building: Taylorsville State Office Building

   Street address: 4315 S 2700 W

   City, state and zip: Taylorsville, UT 84129

   Mailing address: PO Box 146901

   City, state and zip: Salt Lake City, UT 84114-6901

   Contact person(s):

Name: Steve Gooch

Phone: 801-957-9322

Email: sgooch@utah.gov

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

General Information

2. Rule or section catchline: R590-85. Accident and Health Insurance and Medicare Supplement Rates

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

(Why is the agency submitting this filing?):

The rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear and the proposed Section R590-85-6 is being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

   A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

   B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

   D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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 any affected persons. The changes are largely clerical in nature.

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. Jonathan T. Pike, 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

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
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| Other Persons | $0 | $0 | $0 |
| Total Fiscal Benefits | $0 | $0 | $0 |
| Net Fiscal Benefits | $0 | $0 | $0 |

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, 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:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>31A-2-201(3)(a)</th>
<th>31A-2-201.1(2)</th>
<th>31A-22-605(4)(e)</th>
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<tbody>
<tr>
<td>Subsection</td>
<td>31A-22-620(3)(e)</td>
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</table>

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:

10. This rule change MAY become effective on:

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Steve Gooch, Public Information Officer</th>
<th>Date:</th>
<th>09/10/2021</th>
</tr>
</thead>
</table>

R590. Insurance, Administration.
R590-85. Accident and Health Insurance and Medicare Supplement Rates.
R590-85-1. [Purpose and] Authority.

(44) The purpose of this rule is to implement Subsections 31A-22-602(2), 31A-22-605(4)(e), and 31A-22-620(3)(e) by establishing minimum loss ratios and implementing procedures for the filing of accident and health insurance and Medicare supplement premium rates, including the initial filing of rates, and any subsequent rate changes.

(1) The purpose of this rule is to implement Subsections 31A-22-602(2), 31A-22-605(4)(c) and 31A-22-620(3)(e) by establishing minimum loss ratios and implementing procedures for the filing of accident and health insurance and Medicare supplement premium rates, including the initial filing of rates and any subsequent rate changes.

(2) This rule shall apply to:
   (a) an individual accident and health insurance policy except as excluded under Subsection [R590-85-2(3)](3);
   (b) a rate filing is not required for an endorsement that has no rating effect.

(3) If the home state does not require approval, then alternative information must be submitted, including:
   (i) a list of the states to which the rates were submitted;
   (ii) the date submitted;
   (iii) any responses received.


Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Average annual premium per policy" means the average computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies, for example, the fractional premium loading may not affect the average annual premium or anticipated loss ratio calculation.

(2) "Conditionally renewable" means renewal can be declined by class, geographic area, or for stated reasons other than deterioration of health.

(3) "Guaranteed renewable" means renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

(4) "Non-cancelable" means renewal cannot be declined nor can the rates be revised by the insurance company.

(5) "Non-renewable" means renewal is not an option.

(6) "Optional renewable" means renewal is at the option of the insurance company.

(7) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.


(1) When a Rate Filing is Required.

(a) Every filing for a policy, certificate, or endorsement affecting benefits shall be accompanied by a rate filing that complies with this rule.

(b) A rate filing is not required for an endorsement that has no rating effect.

(c) Any subsequent addition to or change in rates applicable to the policy, certificate, or endorsement shall also be filed prior to use.

(2) General Contents of All Rate Filings. Each rate submission shall include:

(a) rate sheets for current and proposed rates, if applicable, that are clearly identified;

(b) an actuarial memorandum describing the basis on which rates were determined, which includes:
   (i) description of the policy, benefits, renewability, general marketing methods, and issue age limits;
   (ii) description of how rates were determined, including a general description and source of each assumption used;
   (iii) estimated average annual premium per policy for Utah;
   (iv) anticipated loss ratio, including interest, of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage;
   (v) minimum anticipated loss ratio presumed reasonable in Subsection R590-85-5 (1); and
   (vi) signed certification by a qualified actuary stating that, to the best of the actuary's knowledge and judgment, the rate filing is in compliance with the applicable laws and rules of Utah and the benefits are reasonable in relation to the premiums charged; and
   (c) a statement that the rates have been filed with and approved by the home state, except as provided in Subsection (3).

(3) If the home state does not require approval, then alternative information must be submitted, including:

(i) a list of the states to which the rates were submitted;
(ii) the date submitted;
(iii) any responses received.

(3)2 This rule does not apply to:

(a) a policy subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Chapter 45, Managed Care Organizations, that complies with Rules R590-167 and R590-277;
(b) a Medicare supplement policy; and
(c) a group insurance policy issued to a trustee as authorized under Subsection 31A-22-504(1)(b)(ii).

(2) This rule does not apply to:

(a) a policy subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Chapter 45, Managed Care Organizations, that complies with Rules R590-167 and R590-277;
(b) a long-term care policy subject to Rule R590-148; and
(c) a limited long-term care policy subject to Rule R590-285.

R590-85-5. Previously Filed Form. Filing a rate change for a previously filed rate shall include the following:

(a) a statement of the scope and reason for the change;
(b) a description of how revised rates were determined, including the general description and source of each assumption used;
(c) an estimated average annual premium per policy in Utah, before and after the proposed rate increase;
(d) a comparison of Utah and average nationwide premiums, for representative rating cells based on the Utah distribution of business;
(e) a comparison of revised premiums with current scale;
(f) a statement as to whether the filing applies to new business, in-force business, or both, and the reasons;
(g) a detailed history of national experience, which includes the data in Subsection R590-85-5(4)(c) that shows on a yearly and durational basis:
   (i) premiums received;
   (ii) earned premiums;
   (iii) benefits paid;
   (iv) incurred benefits;
   (v) increase in active life reserves;
   (vi) increase in claim reserves;
   (vii) incurred loss ratio;
   (viii) cumulative loss ratio; and
   (ix) any other available data the insurer may wish to provide;
(h) detailed history of Utah experience, which includes the data in Subsection R590-85-5(4)(d) that shows on a yearly basis:
   (i) premiums received;
   (ii) earned premiums;
   (iii) incurred benefits;
   (iv) incurred loss ratio; and
   (v) anticipated nationwide future loss ratio, which includes:
   (i) projected premiums;
   (ii) projected claims;
   (iii) projected loss ratio; and
   (iv) assumptions and calculations that include interest.

Interest shall be used in the calculation;
(j) anticipated Utah future loss ratio, which includes:
(i) projected premiums;
(ii) projected claims;
(iii) projected loss ratio; and
(iv) description of assumptions and calculations that include interest.
(5) Experience Records.
(a) As required by the Accident and Health Policy Experience Exhibit, an insurer shall maintain records of premiums collected, earned premiums, benefits paid, incurred benefits and reserves for each calendar year for each policy form, and applicable endorsements. The records shall be maintained as required for the Accident and Health Policy Experience Exhibit.
(i) Separate data may be maintained for each endorsement to the extent appropriate.
(ii) Experience under policies that provide substantially similar coverage may be combined.
(iii) The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued.
(b) A rate revision must provide the information required in Subsection 55-4(4)(5)(a) on both a national and a state basis.
(6) Evaluating Experience Data. In determining the credibility and appropriateness of experience data, such as experience and projected trends relative to the kind of coverage, for example low exposure or low loss frequency;
(b) experience and projected trends relative to the kind of coverage, for example low exposure or low loss frequency;
(c) concentration of experience at early policy durations where loss ratios are expected to be substantially lower than at later policy durations; and
(d) the mix of business by risk classification.
(7) Implementation of a filed rate increase must be initiated within 12 months from the filed date. Otherwise a company forfeits the right to implement the increase if it fails to initiate implementation within 12 months of the filed date.
(8) A filing may be rejected or prohibited if the company fails to submit all required information.

R590-85-5. Reasonableness of Benefits in Relation to Premium.
(1) With respect to a new form under which the average annual premium per policy is expected to be at least $200, the anticipated loss ratio shall be at least as great as shown in this subsection:  
(a) [Medical Expense] Accident and Health Insurance Coverage. Except as provided in Subsections 85-5(1)(d) and 85-5(1)(e), the minimum loss ratio for:
(i) a non-renewable form is 65%;
(ii) an optionally renewable form is 60%;
(iii) a conditionally renewable form is 60%;
(iv) a guaranteed renewable form is 55%; and
(v) a non-cancelable form is 50%.
(b) Income Replacement Insurance Coverage. The minimum loss ratio for:
(i) a non-renewable form is 65%;
(ii) an optionally renewable form is 60%;
(iii) a conditionally renewable form is 55%;
(iv) a guaranteed renewable form is 50%; and
(v) a non-cancelable form is 45%.
(c) For a policy form, including endorsements, under which the expected average annual premium per policy is:
(i) $100 or more but less than $200, subtract five percentage points;
(ii) less than $100 subtract 10 percentage points.
(d) For a Medicare supplement policy, benefits shall be deemed reasonable in relation to premiums if the anticipated loss ratio meets the requirements of Section 146-14.
(e) The minimum loss ratio for a short-term limited duration health insurance form is 70%.
(2) Rate Changes. With respect to the filing of a rate change for a previously filed form, the standards of this subsection shall be met.
(a) Subsections 85-5(2)(a)(i) and 85-5(2)(a)(ii) shall be at least as great as the standards in Subsection 85-5(1) and shall include interest in the calculation of benefits, premiums, and present values:
(i) the anticipated loss ratio over the entire period for which the changed rates are computed to provide coverage; and
(ii) the ratio of Subsections 85-5(2)(a)(ii)(A) and 85-5(2)(a)(ii)(B) where:

(A) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the change, and the present value of future benefits; and

(B) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the change and the present value of future premiums, the present values to be taken over the entire period for which the changed rates are computed to provide coverage, and the accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date an accounting was made to the effective date of the change.

(b) If an insurer wishes to charge a premium for policies issued on or after the effective date of the change, which is different from the premium charged for the policies issued prior to the change date, then:

(i) with respect to policies issued prior to the effective date of the change, the requirements of Subsection 85-5(2)(a) must be satisfied; and

(ii) with respect to policies issued on and after the effective date of the change, the standards are the same as in Subsection 85-5(1), except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.
(c) A company must review its experience periodically and file rate changes, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
(d) A rate filing requesting an increase may be prohibited if a company has failed to file rate changes in a timely manner.

R590-85-6. Enforcement Date.
The commissioner will begin enforcing the revised provisions of this rule on April 1, 2021.

If any provision of this rule, Rule 85-85, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of
this rule shall be given effect without the invalid provision or application.

**Key:** insurance law  
**Date of Last Change:** March 11, 2021  
**Notice of Continuation:** April 4, 2017  
**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-22-605; 31A-22-620

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### NOTICE OF PROPOSED RULE

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<th>Amendment</th>
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<tbody>
<tr>
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<td>Ref (R no.):</td>
<td>Filing ID</td>
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</table>

#### Agency Information

1. **Department:** Insurance  
   **Agency:** Administration  
   **Room no.:** Suite 2300  
   **Building:** Taylorsville State Office Building  
   **Street address:** 4315 S 2700 W  
   **City, state and zip:** Taylorsville, UT 84129  
   **Mailing address:** PO Box 146901  
   **City, state and zip:** Salt Lake City, UT 84114-6901  
   **Contact person(s):**
   - **Name:** Steve Gooch  
     **Phone:** 801-9322  
     **Email:** sgooch@utah.gov

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

---

#### General Information

2. **Rule or section catchline:**
   R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values

3. **Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**
   The rule is being changed as a result of Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear and the proposed Section R590-98-6 is being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements. Current Sections R590-98-7 and R590-98-9 are being removed because penalties are already provided for in statute and this rule is currently being enforced.

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#### Fiscal Information

5. **Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**
   **A) State budget:**
   There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

   **B) Local governments:**
   There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

   **C) Small businesses ("small business" means a business employing 1-49 persons):**
   There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

   **D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**
   There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

   **E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):**
   There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

   **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 any affected persons. The changes are largely clerical in nature.

   **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. Jonathan T. Pike, 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.)

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B) Department head approval of regulatory impact analysis:
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

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:

<table>
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<td>Section 31A-1-301</td>
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<td>Section 31A-2-201</td>
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<td>Section 31A-23a-402</td>
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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:

10. This rule change MAY become effective on:

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<td>Agency head or designee, and title: Steve Gooch, Public Information Officer</td>
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<td>Date: 09/10/2021</td>
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</table>

R590. Insurance, Administration.
R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values.
R590-98-1. Authority.

This rule is [adopted] promulgated by the commissioner pursuant to Sections 31A-2-201 [which empowers the commissioner to make rules necessary to implement Title 31A, and pursuant to Section 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive].

R590-98-2. Purpose and Scope.

1. The purpose of this rule is to:
   a. require a prompt response to a policyholder's request for policy values; and
   b. limit the exercise of the statutory deferral option to a situation where the financial stability of the insurer is at risk.

2. This rule [shall apply] applies to [all persons transacting insurance under Title 31A] an insurer engaged in the business of insurance.


The purpose of this rule is to require a prompt response to policyholder requests for policy values and limit the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.


[In addition to the definitions in Section 31A-1-301, the following definitions apply for the purpose of this rule] Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

[A] "Policy Values" means the values to which the policyholder is entitled upon request for policy loans, withdrawals, or the surrender of the policy and include cash values, accumulated dividends, coupons and other values of a similar nature.

[B] (1)(a) "Deferral" means [the] withholding or [delay in] delaying payment of policy values to the policyholder.

[C] (b) "Deferral" does not include [the] withholding or [delay in] delaying payment to a policyholder of variable life insurance...
and variable annuity payments when the value of investment assets on which payments are based cannot be obtained because:

(4)(i) the Securities and Exchange Commission (SEC) has restricted trading;
(2)(ii) the stock exchange is closed; or
(3)(iii) the SEC permits deferral to protect the policyholder.

[D.2] "Policyholder" shall include, in addition to the definition in 31A-1-301, a certificate holder under a group policy.

(3) "Policy value" means any value to which the policyholder is entitled, upon request, for a policy loan, withdrawal, or surrender of a policy, and includes:

(a) cash values;
(b) accumulated dividends;
(c) coupons; and
(d) other similar values.

R590-98-5. Unfair or Deceptive Acts or Practices.

[The following are hereby defined as unfair or deceptive acts or practices if they are not fair and equitable to all policyholders] Unfair or deceptive acts or practices include:

[A.](1) Failing to comply with a policyholder request for a policy value[s] within 20 days of receipt of such request.
[B.](2) Exercising the nonforfeiture deferral option of a policy, where the request was received within 20 days of the date on which the request was received, unless it is impracticable to do so due to unforeseen circumstances.

[B.](2)(a) If the policy does not specify a policy value[s], the insurer shall file with the commissioner a written request [with the commissioner] for any policy value[s] within 20 days of receipt of such request.

[A.](1) An explanation of the reason for such action, the deferment;
(b) the steps to be taken by the insurer to alleviate the situation;
(c) the manner in which the deferment is being imposed fairly and equitably on all policyholders;
(d) the notice to policyholders as to why the insurer is taking such action; and
(e) the anticipated date on which the policy values are expected to be available.

[B.](3) If a policy loan check is issued in lieu of a cash surrender value,

(i) the loan shall be processed within 20 days of receipt of the request;
(ii) the check for the policy loan value[s] shall be immediately negotiable;
(iii) a stamped, self-addressed envelope and a cash surrender value check, together with appropriate instructions as to how the policyholder may obtain the full policy surrender value;
(iv) a request for the balance of the cash surrender value shall be processed within 10 days of receipt of such request.


Insurers found in violation of this rule shall be subject to revocation of the Certificate of Authority or such other penalty as determined by the commissioner in accordance with law.


If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.


The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date.


If any provision of this rule, Rule R590-98, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law
Date of Last Change: 2021 [January 31, 2006]
Notice of Continuation: April 3, 2019
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

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<th>R590-108</th>
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<td>R590-108</td>
<td>53911</td>
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</tr>
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</table>

Agency Information

1. Department: Insurance

Agency: Administration
NOTICES OF PROPOSED RULES

Room no.: Suite 2300
Building: Taylorsville State Office Building
Street address: 4315 S 2700 W
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 146901
City, state and zip: Salt Lake City, UT 84114-6901
Contact person(s):
Name: Steve Gooch
Phone: 801-957-9322
Email: sgooch@utah.gov

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

General Information

2. Rule or section catchline:
R590-108. Interest Rate During Grace Period or Upon Reinstatement of Policy

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear. It also removes the current Section R590-108-5 and updates the proposed Section R590-108-5 to use the Department's current language. It does not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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 any affected persons. The changes are largely clerical in nature.

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. Jonathan T. Pike, 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.)

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<tr>
<td>Fiscal Benefits</td>
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</table>
R590-108. Interest Rate During Grace Period or Upon Reinstatement of Policy.

1. Authority.
   This rule is promulgated by the [C]commissioner [of insurance under] pursuant to Sections 31A-2-201(3), [to adopt rules to implement the provisions of the Utah Insurance Code, and specifically Sections 31A-22-402, and 31A-22-407(1)] authorizing the commissioner to establish by rule the rate of interest an insurer may charge in a life insurance or annuity contract upon premiums due or overdue during a grace period or upon subsequent reinstatement of the contract.

2. Purpose and Scope.
   (1) The purpose of this rule is to establish the interest rate an insurer may charge on premiums due under a life insurance or annuity contract during a grace period or upon subsequent reinstatement of the contract.
   (2) This rule applies to an insurer offering a life insurance policy or annuity contract.

3. Definitions.
   [For the purpose of this rule the commissioner adopts the definitions as particularly stated.] Terms used in this rule are defined in Section 31A-1-301.

4. Rule.
   [Under Sections 31A-22-402 and 31A-22-407(1), an insurer is authorized to impose and collect an interest charge upon payment of premiums due or overdue during a grace period or upon subsequent reinstatement of a life insurance policy or annuity contract. The rate of interest to be charged shall be the rate set within the policy, but may not exceed the rate of interest in the policy for policy loans. In the absence of a policy loan provision within the policy, the insurer may not impose or collect an interest charge in excess of the maximum interest rate of 8% as established for policy loans under Section 31A-22-420.] The interest rate an insurer may charge during a grace period on overdue premium or subsequent reinstatement of a life insurance policy or annuity contract shall be the rate set in the policy or contract, except that:
   (1) the interest rate may not exceed the interest rate in the policy loan provision in the policy; or
   (2) in the absence of a policy loan provision, the interest rate may not exceed the maximum interest rate under Section 31A-22-420.

5. Penalties.
   Any insurer that fails to comply with the provisions of Sections 31A-22-402 and 31A-22-407(1), or with this rule shall be subject to the forfeiture provisions of Section 31A-2-308.

   [If any provisions of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.] If any provision of this rule, Rule R590-108, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance companies
Date of Last Change: 2021[1987]
Notice of Continuation: April 4, 2017
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-402; 31A-22-407

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### Agency Authorization Information

| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: 09/08/2021 |

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### State Government Fiscal Benefits

| | $0 | $0 | $0 |

### Local Governments Fiscal Benefits

| | $0 | $0 | $0 |

### Small Businesses Fiscal Benefits

| | $0 | $0 | $0 |

### Non-Small Businesses Fiscal Benefits

| | $0 | $0 | $0 |

### Other Persons Fiscal Benefits

| | $0 | $0 | $0 |

### Total Fiscal Benefits

| | $0 | $0 | $0 |

### Net Fiscal Benefits

| | $0 | $0 | $0 |
NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<table>
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<td>R590-114</td>
<td>53929</td>
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**Agency Information**

1. Department: Insurance
2. Agency: Administration
3. Room no.: Suite 2300
4. Building: Taylorsville State Office Building
5. Street address: 4315 S 2700 W
6. City, state and zip: Taylorsville, UT 84129
7. Mailing address: PO Box 146901
8. City, state and zip: Salt Lake City, UT 84114-6901

**Contact person(s):**

- Steve Gooch
  - Phone: 801-957-9322
  - Email: sgooch@utah.gov

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

**General Information**

2. Rule or section catchline:

R590-114 . Letters of Credit

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

The rule is being changed as a result of Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear and Section R590-114-5 is being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

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

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**NOTICES OF PROPOSED RULES**

**A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**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 any affected persons. The changes are largely clerical in nature.

**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. Jonathan T. Pike, 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.)

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</tbody>
</table>
R590. Insurance, Administration.
R590-114. Letters of Credit.

R590-114-1. Authority.
This rule is [adopted] promulgated by the commissioner pursuant to [Section] Sections 31A-2-201(2), which authorizes rules to implement the Insurance Code, and Section] and 31A-17-404(2), which provides for a rule to determine the form of letters of credit used as security to protect a ceding insurer in a transaction of reinsurance.

R590-114-2. Purpose and Scope.
[A.](1) The purpose of this rule is to determine, in accordance with [the guidelines of Section 31A-17-404(3) Subsection 31A-17-404(4)(c)(ii), the form of letter of credit security [which will be acceptable] to protect a ceding insurer in a reinsurance transaction] if reinsurance in which the alternative security factors of Section 31A-17-404(3) or the alternative security factors in Subsection 31A-17-404(3) are not present;

(b) the ceding insurer retains the reinsurer's funds [are retained by the ceding insurer] in the form of a letter of credit.

(2) Security for a reinsurance transaction is maintained [in order that] because the ceding insurer's reinsurance credit [for the reinsurance] may be allowed [the ceding insurer as either has an asset or a deduction from liabilities].

(3) The allowance or disallowance of credit in a reinsurance transaction[a] may be used to determine [compliance] if the transaction complies with other financial requirements of [the] Title 31A, Insurance Code.

[B.] (4) This rule [shall apply to all] applies to any person[s] transacting insurance under [the Utah Title 31A, Insurance Code.

[In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule] Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

[A.] (1) "Clean" shall refer to [means a letter of credit [which that does not require the presentation of any document[s] other than a sight draft for a draw upon available funds.

[B.] (2) "Evergreen clause" shall refer to [means a provision in a letter of credit [which that prevents [expiration of the letter unless advance notice is given by the issuer the letter from expiring unless the issuer provides advance notice.

R590-114-4. Rule.
[A.] (1) A letter of Credit requirements. (1) A letter of credit issued to comply with [Section 31A-17-404(3)(c)(ii), Subsection 31A-17-404(4)(c)(ii)] shall meet the following requirements in this section.

(2) A letter of credit that takes the form of the Model Letter of Credit, available upon request from the department, complies with other financial requirements of [the] Title 31A, Insurance Code.

(3) The allowance or disallowance of credit in a reinsurance transaction[a] may be used to determine [compliance] if the transaction complies with other financial requirements of [the] Title 31A, Insurance Code.

[UTAH STATE BULLETIN, October 01, 2021, Vol. 2021, No. 19]
[3. Shall (b) name the ceding insurer as the sole beneficiary;
4. Shall (c) be [""clean"", as defined];
5. May not contain references to any other agreements, documents or entities;
6. Shall (e) be irrevocable[ and may not be reduced or revoked without the written consent of the beneficiary];
7. Shall (f) contain an [""evergreen clause"", as defined];
8. Shall (g) have a term of not less than one year[ and shall ];
9. Shall (h) be automatically extended for not less than one additional year, unless the issuer[ not less than 30 days prior to expiration, notifies both the ceding insurer and the reinsurer that the letter will not be renewed] notifies the ceding insurer and the reinsurer that the letter will not be renewed at least 30 days before the letter expires;
10. Shall (i) state whether [the letter of credit is subject to the laws of this state]; and
11. Shall (j) provide that any [all] drafts drawn be presentable at a bank office in the United States[.]
4. A letter of credit may not:
   (a) contain references to any other agreement, document, or entity; or
   (b) be reduced or revoked without the written consent of the beneficiary.
5. May-[5(a) A letter of credit may contain a boxed reference section with the applicant's name [of the applicant] and other appropriate information for internal identification[. only to ],
   (b) The information contained in the boxed reference section may not affect the terms of the letter or the obligations of the bank.
6. Nonrenewal or withdrawal of a letter of credit. In the event of nonrenewal or withdrawal of a letter of credit, (6) When a letter of credit is not renewed or is withdrawn, the ceding insurer [shall be able to ] may:
   (a) withdraw the balance of the letter of credit; and
   (b) place the resulting sum[s] in trust to secure continuing obligations under the reinsurance contract until [it receives] the ceding insurer receives the following:
      (i) a renewal letter of credit; or
      (ii) an alternative form of security [which meets the standards of ] that complies with this rule [or the ] Title 31A, Insurance Code.
C. Inspection. [7] A letter of credit used as security under this rule shall be [readily] available for inspection by the commissioner or [his] the commissioner's designee upon request.

R590-114-5. Separability.
If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected. If any provision of this rule, Rule R590-114, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-117
Filing ID 53910

Agency Information
1. Department: Insurance
2. Agency: Administration
3. Room no.: Suite 2300
4. Building: Taylorsville State Office Building
5. Street address: 4315 S 2700 W
6. City, state and zip: Taylorsville, UT 84129
7. Mailing address: PO Box 146901
8. City, state and zip: Salt Lake City, UT 84114-6901

Contact person(s):
Name: Steve Gooch
Phone: 801-957-9322
Email: sgooch@utah.gov

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

General Information
2. Rule or section catchline:
R590-117. Valuation of Liabilities

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear, and Section R590-117-5 is being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

NOTICE OF PROPOSED RULE

R590-117. Valuation of Liabilities

Page 11
Fiscal Information

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

A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

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E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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 any affected persons. The changes are largely clerical in nature.

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. Jonathan T. Pike, 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.)

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</table>

B) Department head approval of regulatory impact analysis:
The Commissioner of the Department of Insurance, Jonathan T. Pike, 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 31A-2-201 | Section 31A-17-402

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: 11/01/2021

10. This rule change may become effective on: 11/08/2021

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

| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: 09/08/2021 |

R590. Insurance, Administration.

R590-117. Valuation of Liabilities.

R590-117-1. Authority.

This rule is [adopted] promulgated by the commissioner pursuant to [Subsections 31A-2-201(1), which authorizes rules to implement the Insurance Code, and Section 31A-17-402], which requires the commissioner to adopt a rule specifying which liabilities shall be reported by insurers and the methods for their evaluation.

R590-117-2. Purpose and Scope.

[A.](1) The purpose of this rule is to:
(a) define statutory liabilities; and
(b) establish a hierarchy of statutory requirements and accounting standards for the valuation of a liability.[comply with the statutory requirement of Section 31A-17-402, to adopt a rule for the valuation of insurer liabilities. The values established under this rule shall be used to determine compliance with other financial requirements of the Insurance Code].

[B.](2) This rule [shall apply to all persons] applies to any person transacting insurance business under [the Utah Title 31A, Insurance Code].


In addition to the definitions of Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:, the following definition shall apply for the purposes of this rule:

[A.](1) “Liabilities” shall include reserves for payment of future obligations.


[A. Liabilities to be reported](1) Reported liabilities include:
1. (a) [All liabilities specifically] any liability provided for or contemplated by the annual statement blank or other reporting form prescribed by the commissioner under Section 31A-2-201[.]; and
2. (b) [Any other liabilities] any liability known to the reporting insurer, except [liabilities] a liability specifically exempted or precluded by the reporting form.

[B. Evaluation of liabilities](2) The value[s] of a reported liability[ies] shall be computed [in accordance with] according to the first applicable method, in ascending order, from the following list, in ascending order:

1. [in accordance with] (a) a specific provision of [the Utah Title 31A, Insurance Code; Title 31A, or;]
2. [in accordance with a specific Insurance Department rule noted as superseding this general rule, or, in the absence thereof, (b) a department rule that supersedes Rule R590-117;]
3. [in accordance with another provision of the Utah Code; or]
4. [in accordance with] (c) a procedure[s] adopted or recommended by the National Association of Insurance Commissioners[.]

NOTICES OF PROPOSED RULES

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-121 Filing ID 53909

Agency Information

1. Department: Insurance

Agency: Administration

Room no.: Suite 2300

Building: Taylorsville State Office Building

Street address: 4315 S 2700 W

City, state and zip: Taylorsville, UT 84129

Mailing address: PO Box 146901

City, state and zip: Salt Lake City, UT 84114-6901

Contact person(s):

Name: Steve Gooch Phone: 801-957-9322

Email: sgooch@utah.gov

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

General Information

2. Rule or section catchline:

R590-121. Rate Modification Plan Rule

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

(Why is the agency submitting this filing?):

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the
Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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 majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Others are changes to make the language of this rule more clear. The current Section R590-121-1 is being renamed with new language, the current Sections R590-121-2 and R590-121-3 are being combined into a new Section R590-121-2, and the current Section R590-121-7 is being changed to R590-121-5 and being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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 any affected persons. The changes are largely clerical in nature.

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. Jonathan T. Pike, 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<td>Benefits</td>
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B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.
R590-121. Rate Modification Plan Rule.

1. Rate modification plans, commonly known as commercial vehicle, commercial general liability and commercial property, workers’ compensation and employers’ liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent to rate risks submitted under Subsection 31A-19a-203(6).

2. This rule applies to:
   a) A property and casualty insurer;
   b) A rate service organization required to file rates and supplementary information under Section 31A-19a-203;
   c) A commercial line of insurance, whether monoline or packaged;
   d) Workers’ compensation insurance; and
   e) Employers’ liability insurance.

3. This rule does not apply to:
   a) Professional liability insurance;
   b) Inland marine risks, which, by general custom, are not written according to manual rules or rating plans; and
   c) Consent-to-rate risks submitted under Subsection 31A-19a-203(6).

R590-121-4. Definitions.

1. “Experience rating plan” means a plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

2. “Manual rate” means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

3. “Rate modification plan” means a rating plan or procedure which provides a listing of risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor which is to increase (debit) or decrease (credit) the manual rate.

4. Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

R590-121-5. [Rule] Rate Modification Justification.

1. Rate modification plans, justified according to the standards herein, are allowed by the insurance commissioner to approve.

2. The commissioner has determined that the use of unjustified rate modification plans is unreasonable, is not objective based on reasonable criteria, and is unfairly discriminatory.

3. The use of unjustified rate modification plans in the rating of commercial property and casualty insurance risks located in Utah is prohibited. Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Section 31A-19a-202(3). Any insurer subject to such an order may request a hearing.
A rate modification plan must limit its application to maximum debits or credits of 25%.

- A modification generated by loss experience or company expense is not subject to this limitation.
- A rate modification plan must be based only on rating characteristics not already reflected in the manual rates.
- The plan must clearly indicate the objective criteria to be used.

- A rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved.
- A rate modification plan must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer.
- A rate modification plan must be based only on rating characteristics not already reflected in the manual rates.
- The plan must clearly indicate the objective criteria to be used.

- A rate modification plan filed previously may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer.

- Any initial and succeeding filing of a rate modification plan must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made.
- An insurer's filing of changes or revisions to a rate modification plan it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer.

- A rate modification plan filed previously may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer.

- Experience rating plans shall be calculated from at least the last three years' premium and loss data.

- Individual underwriting files must contain documentation of the underwriter's evaluation of the risk under the rate modification plan.

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- An insurer's filing of changes or revisions to a rate modification plan must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer.

- The application of a rate modification plan must limit its application to maximum debits or credits of 25%.

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- An insurer's filing of changes or revisions to a rate modification plan it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer.

- Experience rating plans shall be calculated from at least the last three years' premium and loss data.

- Individual underwriting files must contain documentation of the underwriter's evaluation of the risk under the rate modification plan.
NOTICES OF PROPOSED RULES

**R590-121-7. Separability.**

If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, the remainder of the rule and the application of such provision shall not be affected thereby. If any provision of this rule, Rule R590-121, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**R590-121-8. Dissemination.**

Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

**KEY:** insurance law

**Date of Last Change:** 2021

**Notice of Continuation:** December 12, 2016

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-2-203; 31A-19a-201; 31A-19a-202; 31A-19a-203; 31A-23-302

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### NOTICE OF PROPOSED RULE

<table>
<thead>
<tr>
<th>TYPE OF RULE:</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>Utah Admin. Code Ref (R no.):</td>
<td>R861-1A-9</td>
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</tbody>
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#### Agency Information

1. **Department:** Tax Commission
2. **Agency:** Administration
3. **Building:** Utah State Tax Commission
4. **Street address:** 210 N 1950 W
5. **City, state and zip:** Salt Lake City, UT 84134

#### Contact person(s):

- **Name:** Chantay Asper
- **Phone:** 801-297-3901
- **Email:** casper@utah.gov

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

#### General Information

2. **Rule or section catchline:**


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

   The reason for the change is to update statutory references resulting from the repeal of Section 59-2-212 in the 2020 General Session under H.B. 51, Property Assessment Procedure Amendments.

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 update statutory references resulting from the repeal of Section 59-2-212 in H.B. 51 (2020).

### Fiscal Information

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

   - **A) State budget:**
     - This amendment is not expected to impact the state budget because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).

   - **B) Local governments:**
     - This amendment is not expected to impact local governments because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).

   - **C) Small businesses ("small business" means a business employing 1-49 persons):**
     - This amendment is not expected to impact small businesses because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).

   - **D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**
     - This amendment is not expected to impact non-small businesses because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).

   - **E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):**
     - This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).

   - **F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**
     - This amendment is not expected to impact compliance costs for affected persons because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020).
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 amendment is not expected to result in a fiscal impact on businesses because it only updates references as necessary to align with statutory changes made in H.B. 51 (2020). Rebecca Rockwell, 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.)

<table>
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<td>Total Fiscal Benefits</td>
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Net Fiscal Benefits

| Net Fiscal Benefits     | $0                | $0                | $0                |

B) Department head approval of regulatory impact analysis:

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission, 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 59-2-1004  
Section 59-2-1008  
Section 59-2-212  
Section 59-2-1006

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Rebecca L. Rockwell, Commissioner

Date: 09/09/2021

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section [59-2-212]59-2-1008, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:
(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;
(b) a copy of the notice required under Section 59-2-919.1;
(c) a copy of the minutes of the board of equalization;
(d) a copy of the property record maintained by the assessor;
(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under Section R884-24P-66;
(f) a copy of the evidence submitted by the parties to the board of equalization;
(g) a copy of the petition for redetermination; and
(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.
(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.
(5) Appeals to the commission shall be on the merits except for the following:
(a) dismissal for lack of jurisdiction;
(b) dismissal for lack of timeliness;
(c) dismissal for lack of evidence to support a claim for relief.
(6)(a) The commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.
(b) A party may raise a new issue before the commission.
(c)(i) If a taxpayer asserts before the commission a factual error as defined in Section R884-24P-66, the commission may issue an order to show cause as to whether the county assessor recognizes the existence of the factual error.
(ii) If the county assessor fails to respond to an order to show cause within 15 calendar days of issuance under Subsection (6)(c)(i), the commission may find that the failure to respond constitutes that the county assessor recognizes the existence of the factual error.
(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.
(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:
(a) dismissal under Subsections (5)(a) through (c) was improper;
(b) the taxpayer failed to exhaust [all—]administrative remedies at the county level;
(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;
(d) the commission determines that dismissal under Subsections (5)(a) through (c) is improper under Section R884-24P-66; or
(e) a new issue is raised before the commission by a party.
(9) [The provisions of this rule apply]. This rule applies only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, see Sections 59-2-1004 and R884-24P-66.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
Date of Last Change: 2021[April 9, 2020]
Notice of Continuation: November 10, 2016
Authorizing, Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1004; 59-1-705; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8; 69-2-5; 42 USC 12201; 28 CFR 25.107
1992 Edition

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R865-7H-1 Filing ID 53925

Agency Information
1. Department: Tax Commission
Agency: Auditing
Building: Utah State Tax Commission
Street address: 210 N 1950 W
City, state and zip: Salt Lake City, UT 84134

Contact person(s):
Name: Phone: Email:
Chantay Asper 801-297-3901 casper@utah.gov

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

General Information
2. Rule or section catchline:
R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The reason for the change is to modify this section to conform with statutory amendments resulting from 2021 General Session under S.B. 40, Storage Tank Amendments.

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 eliminates the distinction between above-ground storage tanks and below ground storage tanks for purposes of the Environmental Assurance Program. This change is being made to conform this section to statutory changes made under S.B. 40 (2021).

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

A) State budget:
This amendment is not expected to result in costs or savings to the state budget because any fiscal impact would have been accounted for in S.B. 40 (2021).
**Businesses**

Small

Governments

Local Government

State

Fiscal

Regulatory

narratives

this table. Inestimable impacts will be included in

are inestimable fiscal impacts, they will not be included in

6.

for S.B. 40 (2021).  Rebecca Rockwell, Commissioner

to businesses beyond what was projected in the fiscal note

This

name and title of the department head):

impact this rule may have on businesses

G)  Comments by the department head on the fiscal


This

persons beyond what was projected in the fiscal note for S.B. 40

E) Persons other than small businesses, non-small

businesses, state, or local government entities

("person" means any individual, partnership, corporation,

association, governmental entity, or public or private

organization of any character other than an

agency):

This amendment is not expected to result in additional
costs or savings to persons other than small businesses,

non-small businesses, state, or local government entities

beyond what was projected in the fiscal note for S.B. 40

(2021).

F) Compliance costs for affected persons (How much

will it cost an impacted entity to adhere to this rule or its

changes?):

This amendment is not expected to result in additional
compliance costs for affected persons beyond what was projected in the fiscal note for S.B. 40

(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):

This amendment is not expected to result in fiscal impact
to businesses beyond what was projected in the fiscal note for S.B. 40 (2021).  Rebecca Rockwell, 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
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| Non-Small Businesses |
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**B) Department head approval of regulatory impact analysis:**

Commissioner Rebecca L. Rockwell of the Utah State Tax
Commission, 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

19-6-410.5

**Public Notice Information**

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

A) Comments will be accepted
until:

11/01/2021

10. This rule change MAY become effective on:

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.
R865. Tax Commission, Auditing.
R865-7H. Environmental Assurance Fee.
R865-7H-1. Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5. (1) Retailers or consumers who are owners or operators of tanks including owners or operators of above ground storage tanks who do not participate in the Environmental Assurance Program, may receive an exemption from the environmental assurance fee if:
(a) none of the owner's or operator's tanks are covered under the Environmental Assurance Program; and
(b) the owner or operator purchases the petroleum product for the tank directly from the refinery, or purchases a direct import of a petroleum product for which the environmental assurance fee has not previously been imposed.
(2) Retailers or consumers who are owners or operators of tanks and who do not participate in the Environmental Assurance Program, but who fail to meet the conditions provided under this rule to purchase petroleum products exempt from the environmental assurance fee may apply to the commission for a refund of those fees paid, no more often than on a monthly basis.
(3) For purposes of the exemption and refund provisions of this rule, owners or operators of above ground storage tanks include owners of fuel stored in tanks owned by a third party where the owner of the fuel pays a fee for use of the tank.

NOTICE OF PROPOSED RULE
TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R865-20T-15 Filing ID 53924

Agency Information
1. Department: Tax Commission
Agency: Auditing
Building: Utah State Tax Commission
Street address: 210 N 1950 W
City, state and zip: Salt Lake City, UT 84134
Contact person(s):
Name: Chantay Asper Phone: 801-297-3901 Email: casper@utah.gov

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

General Information
2. Rule or section catchline:

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The reason for the change is to promulgate rules specifying the calculation of tax for alternative nicotine products as enacted in the 2020 General Session under S.B. 37, Electronic Cigarette and Other Nicotine Product Amendments.

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 new section specifies the calculation of tax on alternative nicotine products based on the net weight in ounces or the fractional part thereof.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This amendment is not expected to result in costs or savings to the state budget because this rule is consistent with the current calculation method used for certain tobacco products and was used as the basis for calculating the fiscal note for S.B. 37 (2020).

B) Local governments:
This amendment is not expected to result in costs or savings to local governments because this rule is consistent with the current calculation method used for certain tobacco products and was used as the basis for calculating the fiscal note for S.B. 37 (2020).

C) Small businesses ("small business" means a business employing 1-49 persons):
This amendment is not expected to result in additional costs or savings to small businesses beyond what was projected in the fiscal note for S.B. 37 (2020).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This amendment is not expected to result in additional costs or savings to non-small businesses beyond what was projected in the fiscal note for S.B. 37 (2020).
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

This amendment is not expected to result in additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities beyond what was projected in the fiscal note for S.B. 37 (2020).

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

This amendment is not expected to result in additional compliance costs for affected persons beyond what was projected in the fiscal note for S.B. 37 (2020).

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 amendment is not expected to result in fiscal impact to businesses beyond what was projected in the fiscal note for S.B. 37 (2020). Rebecca Rockwell, 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.)

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Fiscal Benefits

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B) Department head approval of regulatory impact analysis:

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission, 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 59-14-804

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

Agency head or designee, and title: Rebecca L. Rockwell, Commissioner

Date: 09/09/2021

R865. Tax Commission, Auditing.
R865-20T. Tobacco Tax.


(1)(a) The tax on an alternative nicotine product shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the alternative nicotine product by the tax rate for alternative nicotine products required under Section 59-14-804.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

(2) The calculation described in Subsection (1) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection (1) is greater than .5.
NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R873-22M-2 Filing ID 53923

Agency Information
1. Department: Tax Commission
Agency: Motor Vehicle
Building: Utah State Tax Commission
Street address: 210 N 1950 W
City, state and zip: Salt Lake City, UT 84134

Contact person(s):
Name: Chantay Asper
Phone: 801-297-3901
Email: casper@utah.gov

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

General Information
2. Rule or section catchline:
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The reason for the change is to clarify the procedures and requirements related to the issuance of a title or a dismantle permit for a vehicle in situations where satisfactory documentary evidence of ownership is lacking.

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 defines the term "nontitle" state and provides for alternative documentation for the owner of a vehicle from a nontitle state to title and register the vehicle in Utah; clarifies the procedures and requirements related to the issuance of a title or a dismantle permit for a vehicle in situations where satisfactory documentary evidence of ownership is lacking and eliminates the requirement for a surety bond on vehicles with a fair market value of less than $3,000 (previously $1,000); specifies the requirements for titling and registering a reconstructed vehicle; and makes other technical changes.

Fiscal Information
5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This amendment is not expected to impact the state budget because these changes do not affect the processes or revenues of the state.

B) Local governments:
This amendment is not expected to impact local governments because these changes do not affect the processes or revenues of local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
The increase of the bonding threshold applying to vehicles for which satisfactory evidence of ownership is lacking may result in a minor cost savings to small businesses such as towing companies who in the course of their business come into possession of vehicles with a fair market value of less than $3,000 for which title has not been formally transferred. However, the extent of this savings cannot be estimated because it is unknown how many vehicles fall below this threshold at any particular point in time.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The increase of the bonding threshold applying to vehicles for which satisfactory evidence of ownership is lacking may result in a minor cost savings to non-small businesses such as towing companies who in the course of their business come into possession of vehicles with a fair market value of less than $3,000 for which title has not been formally transferred. However, the extent of this savings cannot be estimated because it is unknown how many vehicles fall below this threshold at any particular point in time.

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 increase of the bonding threshold applying to vehicles for which satisfactory evidence of ownership is lacking may result in a minor savings to individuals who have come into possession of a vehicle with a fair market value of less than $3,000 for which title has not been formally transferred from the prior owner to the individual. However, the extent of this savings cannot be estimated...
because it is unknown how many vehicles fall below this
threshold at any particular point in time.

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

This change is likely to reduce compliance costs on
affected persons by removing the bonding requirement
from situations in which a bond was previously required.
However, the extent of this savings cannot be estimated
because it is unknown how many vehicles fall below this
threshold at any particular point in time.

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 amendment is expected to result in fiscal savings to
impacted businesses by eliminating the requirement for a
surety bond in certain situations where a surety bond is
currently required. However, the extent of this savings
cannot be estimated because it is unknown how many
vehicles fall below this threshold at any particular point in
time. Rebecca Rockwell, 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.)

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<td>Other Persons</td>
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</table>

B) Department head approval of regulatory impact
analysis:

Commissioner Rebecca L. Rockwell of the Utah State Tax
Commission, 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 41-1a-104 | Section 41-1a-108

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: 11/01/2021

10. This rule change MAY
become effective on: 11/08/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Rebecca L Rockwell, Commissioner</th>
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<td>Date:</td>
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R873-22M. Motor Vehicle.
R873-22M-1. Documentation Required and Procedures to Follow
Register or Title Certain Vehicles Pursuant to Utah Code Ann.
Sections 41-1a-104 and 41-1a-108.

(1) "Nontitle state" means a state that does not issue
certificates of title for vehicles of a particular type or year.

(4)(2) To title or register a vehicle previously registered in
a nontitle state, an applicant must submit[ both of the following]:

(a) the [lost] registration certificate; and
(b) [a lien search from the recording jurisdiction or in lieu of the lien search].

(4)(3) To title or register a repossessed vehicle, an applicant
must submit[ both of the following]:

(a)(i) the [outstanding] certificate of title, with the lien
recorded in favor of the repossessor; or
(ii) if registered in a nontitle state, the registration certificate; and

(b) form TC-569B, Repossession Statement, [signed] completed by the lien holder recorded on the certificate of title or a similar statement or form.

[(4)(d)] To title or register a vehicle previously owned by the U.S. government, an applicant must submit U.S. government Standard Form No. 97.

[(4)(e)] To title or register a vehicle foreclosed by advertisement, an applicant must submit [each of the following]:

(a) a certificate of sale containing [bearing the signature of the person who conducted the sale. The certificate must contain the following information:]

(i) the date of sale;
(ii) the name of the purchaser; [person to whom the vehicle was sold;]

(iii) a complete description of the vehicle;
(iv) the amount due on the contract;
(v) the date that the amount due became delinquent; [and]
(vi) the amount received from the sale of the vehicle; and
(vii) the signature of the person who conducted the sale;

(b) a copy of the notice sent to the owner and lien holder of record; and

(c) proof that notice was published in accordance with Sections 38-2-4 or 38-8-3, as applicable.

[(5)(d)] To title or register a vehicle transferred by divorce decree an applicant must submit [each of the following]:

(a) a certified copy of the divorce decree; and

[(5)(e)] the [outstanding] certificate of title; [and]

[(5)(f)] if registered in a nontitle state, the [last] registration certificate; or [for a nontitle state.]

[(5)(g)] form TC-569A, Ownership Statement.

[(5)(h)] To title or register a vehicle when the current owner is declared incompetent, an applicant must submit [each of the following]:

(a) a certified copy of the court order appointing the guardian; and

[(5)(i)] (i) the [outstanding] certificate of title, endorsed for transfer by the guardian; or

[(5)(j)] (ii) if registered in a nontitle state, the [last] registration certificate, for a nontitle state; and

[(5)(k)] (c) a certified copy of the court order appointing the guardian.]

[(6)(d)] To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

(a) a complete description of the vehicle;
(b) the name of the purchaser; and
(c) the signature of the state, city, or county official who conducted the sale.

[(7)(d)] To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the power of attorney [to the Tax Commission].

[(8)(a)] To title or register a vehicle transferred from a deceased owner when form TC-569C, Survivorship Affidavit, does not apply, the applicant must submit the [outstanding certificate of title or the last registration certificate for a nontitle state. In addition, the applicant must submit one of the following]

(i) (A) the certificate of title; or

(B) if registered in a nontitle state, the registration certificate; and

[(9)(b)(c)] an order from the court confirming sale; or

[(9)(d)] an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

[(10)(a)(b)] When satisfactory documentary evidence of ownership is lacking and the applicant has exhausted [all] normal means of obtaining evidence of ownership, the [Tax Commission] commission may issue a title or a dismantle permit upon receipt of:

(i) a court order; or

(ii) subject to Subsections [(10)(b)(ii)] (11)(b)(i) and (iii), form TC-569A, Ownership Statement.

[(10)(b)(ii)] The form required under Subsection [(10)(b)(ii)] (11)(a)(ii) must contain [each of] the following:

(A) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states; and

[(10)(c)(d)] an explanation of how the vehicle was obtained and from whom;

[(10)(c)(e)] a statement indicating any outstanding liens or encumbrances on the vehicle;

[(10)(c)(f)] a statement indicating where the vehicle was last titled or registered;

[(10)(c)(g)] an indemnification agreement holding the [Tax Commission] commission and its employees harmless from any [and all] liability resulting from the issuance of the title or dismantle permit.

[(10)(c)(h)] If the fair market value of the vehicle as determined by the commission is [has a value of $1,000] $3,000 or less at the time of application, and the vehicle is less than six model years old, or the vehicle is a motorcycle, the vehicle may be subject to a physical examination by an employee appointed by the [Tax Commission] commission prior to issuance of a title or dismantle permit.

[(10)(h)(i)] If the fair market value of the vehicle as determined by the commission is [has a value of $1,000] $3,000 or less at the time of application, the commission may [has a value in excess of $1,000] $3,000, the [Tax Commission] commission shall [may] require a surety bond [in addition to the form described in Subsection (10)(a)(ii)].

[(10)(i)(B)] The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the [Tax Commission] commission.

[(11)(b)] To title or register a specially constructed vehicle, an applicant [shall furnish] shall submit:

[(11)(b)(i)] form TC-569D, Statement of Facts, [explaining] documenting the acquisition of essential parts and the date construction was completed; and [The form must be supported by bills of sale or invoices for the parts.]

[(11)(b)(ii)] An application for an assigned vehicle identification number [must be completed].

[(11)(c)] The assigned vehicle identification number shall be affixed to the specially constructed vehicle and inspected by a peace officer or an authorized agent of the [Tax Commission] commission.

[(12)(a)] The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

[(12)(b)] If satisfactory documentary evidence of ownership is lacking, the commission may title or register a specially constructed vehicle.
vehicle as provided in Subsection (11) must be followed.

(13)(a) To title or register a reconstructed vehicle where the complete running gear and chassis of another vehicle is used, an applicant shall submit:

(i) a form TC-569D, Statement of Facts, documenting the acquisition of essential parts and the date construction was completed;
(ii) the identification number of the vehicle used as the primary base of the reconstructed vehicle which shall correspond to the identification number on the surrendered certificate of title; and
(iii) an application for an assigned vehicle identification number.

(b) The assigned vehicle identification number shall be affixed to the reconstructed vehicle and inspected by a peace officer or an authorized agent of the commission.

(c) Subject to Subsection (13)(c)(ii), the reconstructed vehicle shall retain the manufacturer's name as it appeared on the surrendered title.

(ii) The term "reconstructed" however, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission.

(d) The type of body and vehicle model may be changed to more accurately describe the vehicle. If a new body is used, the year model shall be determined by the date the [rebuilding] reconstruction is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

(e) If satisfactory documentary evidence of ownership is lacking, the commission may title or register a reconstructed vehicle as provided in Subsection (11).

KEY: taxation, motor vehicles, aircraft, license plates
Date of Last Change: 2021
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R884-24P-5 Filing ID 53922

Agency Information

1. Department: Tax Commission
Agency: Property Tax
Building: Utah State Tax Commission
Street address: 210 N 1950 W
City, state and zip: Salt Lake City, UT 84134

Contact person(s):
Name: Chantay Asper
Phone: 801-297-3901
Email: casper@utah.gov

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

General Information

2. Rule or section catchline:

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?): The reason for the change is to clarify the situations where written notice of denial is required to be given to an applicant for property tax abatement, deferral, exemption, or relief.

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 modifies the title of the section to more accurately describe the scope and impact of the rule; clarifies that a county must provide written notice to an applicant whose application for property tax abatement, deferral, exemption, or relief is denied; and adds references to the recently enacted Title 59, Chapter 2, Part 19 Armed Forces Exemptions.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This amendment is not expected to result in costs or savings to the state budget because property tax abatement, deferral, exemption, and relief is administered by local governments.

B) Local governments:
To the extent that local governments are not currently providing notices of denial to applicants for property tax abatement, deferral, exemption, or relief, this change may result in minor postage and administrative costs to these local governments.

C) Small businesses (*small business* means a business employing 1-49 persons):
This amendment is not expected to result in costs or savings to small businesses because these changes only relate to the relief that provided to individuals.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This amendment is not expected to result in costs or savings to non-small businesses because these changes only relate to the relief that provided to individuals.

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

This amendment may result in savings to persons other than small businesses, non-small businesses, state, or local governments to the extent that individuals who qualify for relief successfully appeal a denial of relief as a result of receiving notice of the denial from the local government.

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

This amendment may result in minor compliance costs to certain local governments in the form of postage and administration costs associated with providing denied applicants for relief with the required notice.

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 amendment is not expected to result in a fiscal impact to businesses. Rebecca Rockwell, 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<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>
<td></td>
</tr>
<tr>
<td>Local Governments</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Small Businesses</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Non-Small Businesses</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Other Persons</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Total Fiscal Cost</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Fiscal Benefits</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

Local Governments | $0 | $0 | $0 |
Small Businesses   | $0 | $0 | $0 |
Non-Small Businesses | $0 | $0 | $0 |
Other Persons      | $0 | $0 | $0 |
Total Fiscal Benefits | $0 | $0 | $0 |
Net Fiscal Benefits | $0 | $0 | $0 |

B) Department head approval of regulatory impact analysis:

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission, has reviewed and approved this fiscal analysis.

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: 11/01/2021

10. This rule change MAY become effective on: 01/01/2022

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

Agency head or designee, and title: Rebecca L Rockwell, Commissioner Date: 09/09/2021
NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R884-24P-33 Filing ID 59920

Agency Information
1. Department: Tax Commission
   Agency: Property Tax
   Building: Utah State Tax Commission
   Street address: 210 N 1950 W
   City, state and zip: Salt Lake City, UT 84134
   Mailing address: 210 N 1950 W
   City, state and zip: Salt Lake City, UT 84134
   Contact person(s):
   Name: Chantay Asper
   Phone: 801-297-3901
   Email: casper@utah.gov

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

General Information
2. Rule or section catchline:
   R884-24P-33. 2021 Personal Property Valuation Guides and Schedules

3. Purpose of the new rule or reason for the change
   (Why is the agency submitting this filing?):
   The valuation guides and schedules contained in this section are reviewed and updated annually by the Property Tax Division. The personal property guides and schedules are used for property tax valuation and assessment of business personal property and certain motor vehicles.

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):
   Section 59-2-107 authorizes the State Tax Commission to make rules that define classes of items considered to be personal property and provide valuation percent good schedules to value personal property. County assessors must use the percent good schedules as contained in this section. Any deviation that affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use. The proposed rule amendment modifies the percent good tables.

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
   A) State budget:
   The amount of savings or cost to state government is not affected by this section. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts and local districts. No tax revenues generated by taxation of personal property will be retained by state government.

   B) Local governments:
   The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2022 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2022 are unknown. The proposed personal property schedules in this amendment are raised, lowered, or remain the same for 2022 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service. It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this section.
C) Small businesses ("small business" means a business employing 1-49 persons):

In the aggregate, the amount of savings or cost to small businesses is undetermined. Affected small businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2022 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2022 personal property mix compared to the previous year.

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

In the aggregate, the amount of savings or cost to non-small businesses is undetermined. Affected non-small businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2022 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2022 personal property mix compared to the previous year.

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

In the aggregate, the amount of savings or cost to persons other than small businesses, non-small businesses, and state or local government entities is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2022 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2022 personal property mix compared to the previous year.

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

Local business owners and property tax practitioners will be required to be aware of new percent good figures. This is an annual occurrence; therefore, the ongoing compliance cost to complete this assessment process will not change. The change in taxes charged for these persons depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

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 fiscal impact on businesses is undetermined. Some personal property schedules are raised, some are lowered, and some remain the same. Without knowing the 2022 personal property mix compared to the previous year, it is not possible to determine the impact on affected businesses. Rebecca Rockwell, 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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
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<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
</tr>
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<tbody>
<tr>
<td>State Government</td>
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<tr>
<td>Small Businesses</td>
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</tr>
<tr>
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<tr>
<td>Other Persons</td>
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<tr>
<td>Total Fiscal Cost</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Benefits</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
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<td>State Government</td>
<td>$0</td>
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</tr>
<tr>
<td>Other Persons</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Total Fiscal Benefits</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

Net Fiscal Benefits

| Net Fiscal Benefits      | $0         | $0     | $0     |

B) Department head approval of regulatory impact analysis:
approximating cost new for new or used vehicles.

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for determining cost new:

(i)公布的实际成本的新或旧车辆; or

(ii)受认可的出版物提供了确定新成本的方法:

(i) “Cost new” means the actual cost of the property when completed, including any relevant installation and assembly costs.

(b)(1) “Actual cost” includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(i) 实际成本包括完成车辆所需的组件价值，如储罐、搅拌机、特殊容器、乘客隔间、特殊轴、安装、工程、安装或组装成本。

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(ii) 实际成本不包括销售或消费税、维护合同、注册和许可证费用、经销商费用、轮胎税、运费或运输成本。

(c) "Cost new" means the actual cost of the property when purchased new.

(c) “成本新”意味着购买新财产的实际成本。

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(i) 除非另有规定，税委会和评估人员应根据以下来源确定新成本:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(A) 新或旧车辆的 documented 实际成本; or

(B) 可识别的出版物提供了新或旧车辆近似成本的方法。

(i) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(ii) 下列所购用财产，征税机关可根据该类财产的实际成本除以百分比良好因素来确定新成本：

(A) [class] Class 6 heavy and medium duty trucks;

(B) [class] Class 13 heavy equipment;

(C) [class] Class 17 vessels equal to or greater than 31 feet in length; and

(D) [class] Class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) 百分比良好意味着基于财产的购置成本或新成本的估计价值，按百分比表示，调整了所有种类的折旧和升值。

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(ii) 百分比良好表是根据内税局分类寿命、马歇尔和斯威夫特成本指数、其他数据源或研究，以及车辆评估指南，如派昂价格指南。

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(2) 每年财产税分部将更新并发布百分比良好表用于计算个人财产估价。

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(a) 提议的表应发送给县评估员和利益相关方在采纳前征求意见。

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(b) 每年将安排公众意见期，如有十名或更多感兴趣的方请求或由委员会酌情。

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(c) 县评估员在符合特定条件影响个人财产时可以偏离表。当偏差会影响整个类别或类型个人财产时，必须提供书面报告，附有可验证的数据，以证明变化。替代表可能未经书面批准不得使用。

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(d) 当事方可以请求偏离表为特定财产项目所建立的价值，如果表的使用导致在抵押日期的零售水平交易中的公平市场价值，包括任何有关的安装和装配价值。

(3) The provisions of this rule do not apply to:

(3) 本规则的条款不适用于:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(a) 遭车辆的年龄计税费适用的车辆超过第59-2-405.1条;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(b) 下列个人财产受年龄计税费适用，超过第59-2-405.2条：

(i) an all-terrain vehicle;

(i) 所有地形车辆;

(ii) a camper;

(ii) 营员车;

(iii) an other motorcycle;

(iii) 其他摩托车;

(iv) an other trailer;

(iv) 其他拖车;

(v) a personal watercraft;

(v) 个人摩托艇;

(vi) a small motor vehicle;

(vi) 小型车辆;

(vii) a snowmobile;
(viii) a street motorcycle;
(ix) a tent trailer;
(x) a travel trailer; and
(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;
(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and
(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.
(4) Other taxable personal property that is not included in the listed classes includes:
(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.
(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.
(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.
(6) [All taxable] Taxable personal property, other than personal property subject to an age-based uniform fee under [Section] Sections 59-2-405.1 through 59-2-405.3, or a uniform statewide fee under Section 59-2-405, is classified by expected economic life as follows:
(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.
(i) Examples of property in the class include:
(A) barricades/warning signs;
(B) library materials;
(C) patterns, jigs and dies;
(D) pots, pans, and utensils;
(E) canned computer software;
(F) hotel linen;
(G) wood and pallets;
(H) video tapes, compact discs, and DVDs; and
(I) uniforms.
(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:
(A) retail price of the canned computer software;
(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of [all] expected licensing fees paid pursuant to the agreement.
(iv) Video tapes, compact discs, and DVDs are valued at [$15.00] $15 per tape or disc for the first year and [$3.00] $3 per tape or disc thereafter.

NOTICES OF PROPOSED RULES

TABLE 1

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>[20] 21</td>
<td>76%</td>
</tr>
<tr>
<td>[19] 20</td>
<td>64%</td>
</tr>
<tr>
<td>[18] 19 and prior</td>
<td>11%</td>
</tr>
</tbody>
</table>

(b) Class 2 - Computer Integrated Machinery.
(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:
(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.
(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.
(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.
(ii) Examples of property in this class include:
(A) CNC mills;
(B) CNC lathes; or
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>[18] 19 and prior</td>
<td>11%</td>
</tr>
<tr>
<td>[17] 18</td>
<td>44%</td>
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<tr>
<td>[16] 17</td>
<td>51%</td>
</tr>
<tr>
<td>[15] 16</td>
<td>40%</td>
</tr>
<tr>
<td>[14] 15</td>
<td>26%</td>
</tr>
<tr>
<td>[13] 14 and prior</td>
<td>13%</td>
</tr>
</tbody>
</table>

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.
(i) Examples of property in this class include:
(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
### Table 3

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>[20]21</td>
<td>90%</td>
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<td>[19]20</td>
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<tr>
<td>[18]19</td>
<td>55%</td>
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<tr>
<td>[17]18</td>
<td>37%</td>
</tr>
<tr>
<td>[16]17 and prior</td>
<td>18%</td>
</tr>
</tbody>
</table>

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>[20]21</td>
<td>96%</td>
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<td>[19]20</td>
<td>88%</td>
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<td>[13]14</td>
<td>24%</td>
</tr>
<tr>
<td>[12]13 and prior</td>
<td>13%</td>
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</tbody>
</table>

(e) Class 6 - Heavy and Medium Duty Trucks.

### Table 5

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>[21]22</td>
<td>90%</td>
</tr>
<tr>
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<td>88%</td>
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<td>[19]20</td>
<td>78%</td>
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<tr>
<td>[18]19</td>
<td>67%</td>
</tr>
<tr>
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<tr>
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</tr>
<tr>
<td>[12]13 and prior</td>
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</table>

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

## Table 6

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<th>Model Year</th>
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<td>[12]%</td>
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</tbody>
</table>

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available. Examples of machinery and equipment include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or canning equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
NOTICES OF PROPOSED RULES

(IV) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
(VII) VGO, amine, SWS, and HDS separators and drums;
(VIII) VGO and tank pumps;
(X) TGU modules; and
(X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

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<th>Percent Good of Acquisition Cost</th>
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<tr>
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<td>[11]12</td>
<td>22%</td>
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<tr>
<td>[10]11 and prior</td>
<td>12%</td>
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</tbody>
</table>

(h) Class 9 - Off-Highway Vehicles. Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.
(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property. Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
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<td>[07]08 and prior</td>
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</table>

(j) Class 11 - Street Motorcycles. Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.
(k) Class 12 - Computer Hardware.
(i) Examples of property in this class include:
(A) data processing equipment;
(B) personal computers;
(C) main frame computers;
(D) computer equipment peripherals;
(E) cad/cam systems; and

(F) copiers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
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</thead>
<tbody>
<tr>
<td>[20]21</td>
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<td>9%</td>
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<tr>
<td>[16]17 and prior</td>
<td>7%</td>
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</table>

(m) Class 14 - Motor Homes. Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.
(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.
(i) Examples of property in this class include:
(A) crystal growing equipment;
(B) die assembly equipment;
(C) wire bonding equipment;
(D) encapsulation equipment;
(E) semiconductor test equipment;
(F) clean room equipment;
(G) chemical and gas systems related to semiconductor manufacturing;
(H) deionized water systems;
(I) electrical systems; and
(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
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<tr>
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</tr>
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</table>

(o) Class 16 -- [Long Life] Long Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:
(A) billboards, excluding LED component;
(B) sign towers;
(C) radio towers;
(D) ski lift and tram towers;
(E) non-farm grain elevators;
(F) bulk storage tanks;
(G) underground fiber optic cable;
(H) solar panels and supporting equipment; and
(I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
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<th>Year of Acquisition</th>
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<td>[37]39</td>
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</tbody>
</table>

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:
(A) houseboats equal to or greater than 31 feet in length;
(B) sailboats equal to or greater than 31 feet in length; and
(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
(A) is not included in Class 17;
(B) may not be valued using Table 17; and
(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
(A) the following publications or valuation methods;
(B) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
(C) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
(D) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
(aa) the manufacturer's suggested retail price for comparable property;
or
(bb) the cost new established for that property by a documented valuation source; or
(B) the documented actual cost of new or used property in this class.


(vi) Property in this class has a residual taxable value of $1,000.

<table>
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<th>Percent Good of Cost New</th>
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<tr>
<td>[44]45</td>
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</tbody>
</table>

(q) Class 17a - Vessels Less Than 31 Feet in Length. Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a -- [Tent Trailers/Truck Campers]. Tent Trailers or Truck Campers. Because Section 59-2-405.2 subjects travel trailers and [tent trailers/truck campers] tent trailers or truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:
(A) oil and gas exploration equipment;
(B) distillation equipment;
(C) wellhead assemblies;
(D) holding and storage facilities;
(E) drill rigs;
(F) re-injection equipment;
(G) metering devices;
(H) cracking equipment;
(I) well-site generators, transformers, and power lines;
(J) equipment sheds;
(K) pumps;
(L) radio telemetry units; and
(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

### TABLE 20

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</tbody>
</table>

(i) Class 21 - Commercial Trailers.
(i) Examples of property in this class include:
(A) dry freight van trailers;
(B) refrigerated van trailers;
(C) flat bed trailers;
(D) dump trailers;
(E) livestock trailers; and
(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

(u) Class 21a -- [Other Trailers (Non-Commercial)].
Other Non-Commercial Trailers. Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles. Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Recorded With the State. Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission [rule] Section R884-24P-32. Leasehold improvements include:

(A) walls and partitions;
(B) plumbing and roughed-in fixtures;
(C) floor coverings other than carpet;
(D) store fronts;
(E) decoration;
(F) wiring;
(G) suspended or acoustical ceilings;
(H) heating and cooling systems; and
(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

### TABLE 21

<table>
<thead>
<tr>
<th>Model Year</th>
<th>Percent Good of Cost New</th>
</tr>
</thead>
<tbody>
<tr>
<td>[24]22</td>
<td>95%</td>
</tr>
<tr>
<td>[25]23</td>
<td>90%</td>
</tr>
<tr>
<td>[26]24</td>
<td>85%</td>
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<tr>
<td>[27]25</td>
<td>80%</td>
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<tr>
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<td>75%</td>
</tr>
<tr>
<td>[29]27</td>
<td>70%</td>
</tr>
<tr>
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<td>65%</td>
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<tr>
<td>[31]29</td>
<td>60%</td>
</tr>
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<td>55%</td>
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<tr>
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<td>45%</td>
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<td>[35]33</td>
<td>40%</td>
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<tr>
<td>[36]34</td>
<td>35%</td>
</tr>
<tr>
<td>[37]35</td>
<td>30%</td>
</tr>
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<td>[38]36</td>
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<tr>
<td>[39]37</td>
<td>20%</td>
</tr>
<tr>
<td>[40]38</td>
<td>15%</td>
</tr>
<tr>
<td>[41]39</td>
<td>10%</td>
</tr>
</tbody>
</table>

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies.

Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;
(B) aircraft parts manufacturing molds;
(C) aircraft parts manufacturing patterns;
(D) aircraft parts manufacturing taps and gauges; and
(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>90%</td>
</tr>
<tr>
<td>2020</td>
<td>74%</td>
</tr>
<tr>
<td>2019</td>
<td>56%</td>
</tr>
<tr>
<td>2018</td>
<td>38%</td>
</tr>
<tr>
<td>2017</td>
<td>20%</td>
</tr>
<tr>
<td>2016 and prior</td>
<td>4%</td>
</tr>
</tbody>
</table>

(aa) Class 26 - Personal Watercraft. Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:
(A) electrical power generators; and
(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>97%</td>
</tr>
<tr>
<td>2020</td>
<td>95%</td>
</tr>
<tr>
<td>2019</td>
<td>92%</td>
</tr>
<tr>
<td>2018</td>
<td>90%</td>
</tr>
<tr>
<td>2017</td>
<td>87%</td>
</tr>
<tr>
<td>2016</td>
<td>84%</td>
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<td>2015</td>
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<td>2011</td>
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<td>2010</td>
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<tr>
<td>2008</td>
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<tr>
<td>2007</td>
<td>61%</td>
</tr>
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<td>2006</td>
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<td>2005</td>
<td>56%</td>
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<td>2003</td>
<td>51%</td>
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<td>48%</td>
</tr>
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<td>2001</td>
<td>45%</td>
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<td>2000</td>
<td>43%</td>
</tr>
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<td>40%</td>
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<td>1998</td>
<td>38%</td>
</tr>
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<td>1997</td>
<td>35%</td>
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<td>1996</td>
<td>32%</td>
</tr>
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<td>30%</td>
</tr>
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<td>1994</td>
<td>27%</td>
</tr>
<tr>
<td>1993</td>
<td>25%</td>
</tr>
<tr>
<td>1992</td>
<td>22%</td>
</tr>
<tr>
<td>1991</td>
<td>19%</td>
</tr>
<tr>
<td>1990</td>
<td>17%</td>
</tr>
<tr>
<td>1989</td>
<td>14%</td>
</tr>
<tr>
<td>1988</td>
<td>12%</td>
</tr>
<tr>
<td>1987 and prior</td>
<td>9%</td>
</tr>
</tbody>
</table>

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and
(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

<table>
<thead>
<tr>
<th>Year of Acquisition</th>
<th>Percent Good of Acquisition Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>75%</td>
</tr>
<tr>
<td>2020</td>
<td>70%</td>
</tr>
<tr>
<td>2019</td>
<td>50%</td>
</tr>
<tr>
<td>2018 and prior</td>
<td>25%</td>
</tr>
<tr>
<td>2017 and prior</td>
<td>0%</td>
</tr>
</tbody>
</table>

This rule shall be implemented and become binding on taxpayers beginning January 1, 2022.

KEY: taxation, personal property, property tax, appraisals

Date of Last Change: 2021 November 30, 2020

Notice of Continuation: November 10, 2016


NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Ref (R no.): R884-24P-37

Filing ID 53921

Agency Information

1. Department: Tax Commission

Agency: Property Tax

Building: Utah State Tax Commission

Street address: 210 N 1950 W

City, state and zip: Salt Lake City, UT 84134

Contact person(s):

Name: Chantay Asper

Phone: 801-297-3901

Email: casper@utah.gov

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

2. Rule or section catchline:

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The reason for the change is to clarify the calculations that must be maintained in the real property appraisal records for condominiums.

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 excludes condominiums from the requirement that the real property appraisal records must separately show the value of the land and any improvements.

Fiscal Information

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

| A) State budget: |
The amount of savings or cost to state government is not affected by this section. Tax revenue generated by taxing real property is distributed to local governments to finance public services, programs, school districts and local districts. No tax revenues generated by taxation of real property will be retained by state government.

| B) Local governments: |
This change is unlikely to result in savings or costs to local governments because local governmental entities receive tax revenue based on increased or decreased property values and the change in the annual property tax rate. While this change modifies the information that must be maintained by the county in the real property appraisal records, the change does not directly impact property values or the annual property tax rate.

| C) Small businesses ("small business" means a business employing 1-49 persons): |
This change is unlikely to result in savings or costs to small businesses because property taxes are assessed based on increased or decreased property values and the change in the annual property tax rate. While this change modifies the information that must be maintained by the county in the real property appraisal records, the change does not directly impact property values or the annual property tax rate.

| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
This change is unlikely to result in savings or costs to non-small businesses because property taxes are assessed based on increased or decreased property values and the change in the annual property tax rate. While this change modifies the information that must be maintained by the county in the real property appraisal records, the change does not directly impact property values or the annual property tax rate.

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Cost</td>
</tr>
<tr>
<td>State Government</td>
</tr>
<tr>
<td>Local Governments</td>
</tr>
</tbody>
</table>
Small Businesses $0 $0 $0
Non-Small Businesses $0 $0 $0
Other Persons $0 $0 $0
Total Fiscal Cost $0 $0 $0

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

B) Department head approval of regulatory impact analysis:
Commissioner Rebecca L. Rockwell of the Utah State Tax Commission, 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 59-2-301 Section 59-2-305

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: 11/01/2021

10. This rule change MAY become effective on: 01/01/2022
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.

NOTICE OF PROPOSED RULE
TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R986-700 Filing ID 53955

Agency Information
1. Department: Workforce Services
Agency: Employment Development
Building: Olene Walker Building
Street address: 140 E Broadway (300 S) Salt Lake City, UT
City, state and zip: Salt Lake City, UT 84145-0244
Mailing address: PO Box 45244
City, state and zip: Salt Lake City, UT 84145-0244

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
(A) [Repealed.] (1) The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:
\[\text{[1.]}\] owner of the property;
\[\text{[2.]}\] property description and identification number;
\[\text{[3.]}\] description and location of the property; and
\[\text{[4.]}\] full market value of the property.
(B) [Repealed.] (2) Except as provided in Subsection (2)(b), real property appraisal records shall separately show the value of the land and the value of any improvements.
\[\text{(b)}\] The real property appraisal records for a condominium are not required to separately show the value of the land and the value of any improvements.

KEY: taxation, personal property, property tax, appraisals

Date of Last Change: 2021 [November 30, 2020]
Notice of Continuation: November 10, 2016
NOTICES OF PROPOSED RULES

Funded and does not rely on local governments for funding, administration, or enforcement.

This program is federally-granted to the state through the federal CCDF.

Implementing this rule change will be paid with funds granted to the state through the federal CCDF.

The rule change clarifies that Child Care assistance is provided to support employment for qualified households with at least one minor dependent child who is a United States citizen and some are not. The proposed rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

The purpose of this rule change is to define the term "employment" as it is used in this rule and to bring this rule into conformity with the Child Care and Development Fund (CCDF) plan for Utah and existing Department of Workforce Services (Department) practice. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

This rule change defines employment in keeping with the definition used in the CCDF plan for Utah. CCDF policy allows payment of Child Care assistance to "mixed status" families, or families where some household members are United States citizens and some are not. The proposed rule change clarifies that Child Care assistance is provided to support employment for qualified households with at least one minor dependent child who is a United States citizen or who meets qualified alien status, in keeping with the CCDF plan and existing Department practice.

The rule change is not expected to have any fiscal impact on small businesses because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, Department practice, and the Rulewriting Manual for Utah.

This rule change is not expected to have any fiscal impact on non-small businesses because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, Department practice, and the Rulewriting Manual for Utah.

The rule change is not expected to have any fiscal impact on other persons because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, Department practice, and the Rulewriting Manual for Utah.

The rule change is not expected to cause any compliance costs for affected persons because the rule change does not create any new eligibility or administrative requirements for recipients or any other affected persons.

After a thorough analysis, it was determined that this rule change will have no fiscal impact to businesses.

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.

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

General Information

2. Rule or section catchline:
R986-700. Child Care Assistance

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule change is to define the term "employment" as it is used in this rule and to bring this rule into conformity with the Child Care and Development Fund (CCDF) plan for Utah and existing Department of Workforce Services (Department) practice. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

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 change defines employment in keeping with the definition used in the CCDF plan for Utah. CCDF policy allows payment of Child Care assistance to "mixed status" families, or families where some household members are United States citizens and some are not. The proposed rule change clarifies that Child Care assistance is provided to support employment for qualified households with at least one minor dependent child who is a United States citizen or who meets qualified alien status, in keeping with the CCDF plan and existing Department practice.

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 because any costs associated with implementing this rule change will be paid with funds granted to the state through the federal CCDF.

B) Local governments:
This rule change is not expected to have any fiscal impact on local governments because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.

C) Small businesses ("small business" means a business employing 1-49 persons):
The rule change is not expected to have any fiscal impact on small businesses because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, DWS practice, and the Rulewriting Manual for Utah.

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 because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, Department practice, and the Rulewriting Manual for Utah.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
The rule change is not expected to have any fiscal impact on other persons because the change provides only technical, conforming, and stylistic changes in accordance with the CCDF plan for Utah, Department practice, and the Rulewriting Manual for Utah.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
The rule change is not expected to cause any compliance costs for affected persons because the rule change does not create any new eligibility or administrative requirements for recipients or any other affected persons.

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 this rule change will have no fiscal impact 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.)

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
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<td>Government</td>
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<td></td>
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<tr>
<td>Local</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Governments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Businesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Small Businesses</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>----------------------</td>
<td>------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Other Persons</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total Fiscal Cost</strong></td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Fiscal Benefits</strong></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>
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<tr>
<td>Small Businesses</td>
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<td>$0</td>
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</tr>
<tr>
<td>Non-Small Businesses</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Other Persons</td>
<td>$0</td>
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<tr>
<td><strong>Total Fiscal Benefits</strong></td>
<td>$0</td>
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<td>$0</td>
</tr>
<tr>
<td><strong>Net Fiscal Benefits</strong></td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

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

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.

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**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 35A-3-102 | Section 35A-3-310 | Section 53F-5-210

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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:** 11/01/2021

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10. This rule change MAY become effective on: 11/08/2021

**Agency Authorization Information**

| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 09/09/2021 |

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**R986. Workforce Services, Employment Development.**
**R986-700. Child Care Assistance.**
**R986-700-701. Definitions and Acronyms.**

(1) The terms used in this rule are defined in Sections 35A-3-102 and 35A-3-201.

(2) In addition:

- "ALJ" means Administrative Law Judge.
- "Applicant" means any person requesting CC.
- "Approved Provider" means a provider who meets the requirements in Section R986-700-726.
- "CC" means Child Care assistance or subsidy.
- "CCDF" means Child Care and Development Fund.
- "Certification period" as it relates to a recipient of CC is the period of time for which CC is presumptively approved.
- "Client" means an applicant for, or recipient of, CC.
- "Child" includes children and vice versa.
- "Child Care Provider" or "Provider" means any person, individual or corporation, institution or organization that provides child care services.
- "Department" means Department of Workforce Services.
- "DWS" means Department of Workforce Services.
- "Employment" means a job or providing a service that pays wages, a salary, in-kind benefits, or self-employment income, provided federal or state law does not prohibit the occupation and wages or other remuneration are obtained legally.
- "Employment plan" is a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.
- "FEPTP" means Family Employment Program Two Parent.
- "FFN" means Family, Friend and Neighbor provider.
- "Financial assistance" means a payment, other than for SNAP, CC, or medical care, to an eligible individual or household that is intended to provide for the individual's or household's basic needs.
- "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued.
- "IPV" means intentional program violation.
- "Licensed-center provider" means a non-hourly, licensed child care center that is regulated through CCL.
- "Local office" means the Employment Center that serves the geographical area in which the client resides.
- "Minor child" means a child under the age of 18, or under 19 years of age and in school full time and expected to complete the educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.
- "OCC" means Department of Workforce Services, Office of Child Care.
- "ORS" means Office of Recovery Service, Utah State Department of Human Services.
NOTICES OF PROPOSED RULES


(1) Child Care assistance is provided to support employment for a qualified household with at least one minor dependent child who is a United States citizen or who meets qualified alien status for U.S. citizens and qualified alien authorized to work in the U.S. Child Care assistance for approved education and training activities, job search, or for an approved temporary change in the U.S. Child Care assistance for approved education and training activities, job search, or for an approved temporary change as defined in Section R986-700-703 may be authorized in accordance with this rule.

(2) Child Care assistance is available, as funding permits, to a client who is employed or participating in activities that lead to employment, and is:
   (a) a parent, including a foster care parent who receives foster care reimbursement from the Utah Department of Human Services, Division of Family and Child Care Services (DCFS), or its successor;
   (b) a specified relative; or
   (c) a client who has been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care assistance is provided only for a child living who lives in the home of the client and only during hours when neither parent or other guardian is available to provide care for the child. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, each of the following children, living in the household unit, are eligible:
   (a) a child under the age of 13 years; and
   (b) a child up to the age of 18 years if the child:
      (i) meets the requirements of Section R986-700-717; or
      (ii) is under court supervision.

(5) A client who qualifies for CC will be paid if and as funding is available. When the child care needs of an eligible applicant exceed available funding, the applicant will be placed on a waiting list. Eligible applicants on the waiting list will be served as funding becomes available. Special needs children, homeless children, and FEP or FEPTP eligible children will be prioritized at the top of the waiting list and will be served first. "Special needs child" is defined in Section R986-700-717.

(6) Child Care assistance is issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) Child Care assistance can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Child Care assistance will not be paid for the care of a client's own child during the time the client is working as a caregiver in the same residential setting where care is being provided. Child Care assistance will not be approved where the client is working for an approved child care center and regularly watches the client's own children at the center or has an ownership interest in the child care center. Child Care assistance will not be paid for the care of a client's own child if the client is also the licensee or is a stockholder, officer, director, partner, manager, or member of a corporation, partnership, limited liability partnership or company, or similar legal entity providing the child care.

(10) Neither the Department nor the state is liable for an injury that may occur when a child is placed in child care even if the parent receives CC from the Department.

(11) Once eligibility for CC has been established, eligibility must be reviewed once every 12 months. The review is not complete until the client has completed, signed, and returned each necessary review form to the local office. Each requested verification must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in Subsection R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

KEY: child care, grant programs
Date of Last Change: 2021
Notice of Continuation: August 28, 2020
Authorizing, and Implemented or Interpreted Law: 35A-3-203; 35A-3-310; 53F-5-210

End of the Notices of Proposed Rules Section
NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the Utah State Bulletin, it may receive comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a CHANGE IN PROPOSED RULE, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the Utah State Bulletin ends November 01, 2021.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the Utah State Bulletin. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them ([example]). A row of dots in the text between paragraphs (........) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Office of Administrative Rules may include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through January 29, 2022, an agency may notify the Office of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the CHANGE IN PROPOSED RULE. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Office of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE by the end of the 120-day period after publication, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page
Agency Information

1. Department: Health
2. Agency: Disease Control and Prevention, Environmental Services
3. Room no.: Second Floor
4. Building: Cannon Health Building
5. Street address: 288 N 1460 W
6. City, state and zip: Salt Lake City, UT 84116
7. Mailing address: PO Box 142102
8. City, state and zip: Salt Lake City, UT 84114-2102
9. Contact person(s): Karl Hartman
10. Name: Phone: khartman@utah.gov
11. Filing ID: 53643

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

General Information

2. Rule or section catchline: R392-106. Microenterprise Home Kitchen Sanitation

3. Publication date of previous proposed rule or change in proposed rule: 07/15/2021

4. Reason for this change (Why is the agency submitting this filing?): During the public comment period, the Department of Health (Department) received two comments on Rule R392-106 that necessitated revisions to the proposed rule that were substantive in nature. As a result, the Department seeks to publish the attached proposed rule document for an additional public comment period.

5. Summary of this change (What does this filing do?):
1. Section R392-106-6 was amended to clarify that the handwash station described in Section R392-106-6 is not required in addition to the kitchen sink and toilet room sink. Either of those sinks can be used for handwashing.
2. Section R392-106-6 was amended to remove inconsistent terminology. "Warm water" was replaced with "hot water and cold water."

6. Aggregate anticipated cost or savings to:

A) State budget:
Enacting Rule R392-106 will not result in a cost or benefit to the state budget because the proposed rule change does not require a change to state operations or programs, and it does not include requirements for the payment of fines or fees to the state.

B) Local government:
Enacting Rule R392-106 will not result in a cost or benefit to a local health department that permits a microenterprise home kitchen according to the requirements of Rule R392-106 because the proposed rule contains a provision that allows the local health department to impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen. The local health department may also charge an additional fee to conduct a foodborne illness investigation, as needed.

C) Small businesses ("small business" means a business employing 1-49 persons):
Enacting Rule R392-106 may result in an inestimable fiscal cost to small businesses that operate a microenterprise home kitchen according to the requirements of Rule R392-106. The full fiscal impact to small businesses cannot be estimated as the necessary data are unavailable, and the cost to the state to obtain said data is prohibitively costly and cannot be obtained until after the rule is enacted. Unavailable data include the number of microenterprise home kitchen permits a local health department will issue, the cost of the permit fee, as authorized in Section 28-15-103, and an analysis of the time and resources spent preparing a home kitchen to qualify as a permitted establishment.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Not Applicable. By definition, there cannot be any non-small microenterprise home kitchen businesses in Utah.
E) Persons other than small businesses, non-small businesses, or state or local government entities (*"person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency*):

Enacting Rule R392-106 will not result in a direct cost or benefit to any one specific person.

F) Compliance costs for affected persons:

No specific person will be affected by this rule. 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):

There is no additional fiscal impact due to these proposed changes. Nathan Cheketts, Interim 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.)

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<tr>
<td>Local Governments</td>
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<tr>
<td>Small Businesses</td>
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<table>
<thead>
<tr>
<th>Fiscal Benefits</th>
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<tbody>
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<td>State Government</td>
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<td><strong>Total Fiscal Benefits</strong></td>
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</tbody>
</table>

Net Fiscal Benefits

B) Department head approval of regulatory impact analysis:

The Interim Executive Director of the Department of Health, Nathan Cheketts, 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:

<table>
<thead>
<tr>
<th>Citation</th>
<th>Subsection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 26-1-5</td>
<td>Subsection 26-1-30(23)</td>
</tr>
<tr>
<td>Section 26-15-2</td>
<td></td>
</tr>
<tr>
<td>Subsection 26-15c-105(2)</td>
<td></td>
</tr>
</tbody>
</table>

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: 11/01/2021

10. This rule change MAY become effective on: 11/08/2021

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

| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: 09/14/2021 |

R392. Health, Disease Control and Prevention, Environmental Services.

(1) This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsections 26-15c-105(2) and 26-1-30(23).

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a microenterprise home kitchen, as defined in Section 26-15c-102, and, in order to safeguard public health and ensure that food is safe, unadulterated, and honestly presented, provides for the prevention and control of health hazards associated with a microenterprise home kitchen.
This rule applies to a microenterprise home kitchen, as defined, and does not apply to any other type of food establishment.

As used in this rule:
(1) "Clean" means the condition of being visibly free from dirt, soil, stain, leftover food particles, or other materials not intended to be a part of the object in question.
(2) "Department" means the Utah Department of Health.
(3) "Employee" means a person who works in a microenterprise home kitchen, including the operator, whether for monetary compensation or not and regardless of relationship to the operator.
(4) "FDA Food Code" or "Food Code" means the version of U.S. Public Health Service, Food and Drug Administration, Model Food Code as incorporated by reference with exceptions and amendments in Rule R392-100.
(5) "Food" has the same meaning as defined in Section 26-15c-102.
(6) "HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
(7) "Hot water" means water heated to a temperature of not less than 110 deg F at the outlet.
(8) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
(9) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury. An imminent health hazard may include an emergency such as a fire, flood, extended interruption of electrical or water service, wastewater backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.
(10) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping clothes, and work garments including cloth gloves.
(11) "Local health department" has the same meaning as defined in Section 26A-1-102.
(12) "Local health officer" means the director of the jurisdictional local health department or a designated representative.
(13) "Microenterprise home kitchen" has the same meaning as defined in Section 26-15c-102.
(14) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof.
(15) "Operator" means a person who resides in the private home and who owns, manages, or controls, or who has the duty to manage or control, a microenterprise home kitchen.
(16) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater or liquid-borne waste materials to the drainage system of the premises.
(17) "Ready-to-eat" has the same meaning as defined in Subsection 26-15c-102(6).
(18) "Sanitized" means the application of cumulative heat or chemicals on cleaned food, ice, or potable water contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.
(19) "Time or temperature control food" or "TCS" has the same meaning as defined in Subsection 26-15c-102(7).
(20) "Wastewater" means sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state.

(1) The operator shall:
(a) comply with [the provisions of] this rule; and
(b) be responsible for the conduct of employees to ensure compliance with this rule.
(2) Microenterprise home kitchens are exempt from the requirements of Rule R392-100, Food Service Sanitation, unless otherwise stated in this rule.
(3) An employee who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a microenterprise home kitchen is a food handler and shall meet the requirements of Rule R392-103.
(4) At least one employee shall:
(a) be certified in food safety management according to the requirements of Rule R392-101; and
(b) maintain proof of food safety management certification available for review by the local health officer upon request.

(1) An operator shall operate a microenterprise home kitchen only after obtaining a valid permit to operate issued by a local health department that has jurisdiction over the geographical area in which the home kitchen is located.
(2) An operator shall only qualify for a microenterprise home kitchen permit if:
(a) food that is served at the microenterprise home kitchen is processed in compliance with state and federal regulations; and
(b) the microenterprise home kitchen operates only during the hours approved in the microenterprise home kitchen permit.
(3) A local health department shall impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen.
(4)(a) Until July 1, 2022, the number of microenterprise home kitchen permits issued by a local health department may not exceed:
(i) for a county of the first or second class, 15% of the total number of permits issued by the local health department to food service establishments as defined in Section 26-15a-102; or
(ii) for a county of the third through sixth class, 70% of the total number of permits issued by the local health department to food service establishments as defined in Section 26-15a-102.
(b) For a local health department with jurisdiction over two or more counties, the permit limitation established under Subsection (4)(a) shall be calculated separately for each county within the local health department’s jurisdiction.

(c) After July 1, 2022, the requirements relating to permit limits as specified in Subsection (4) are repealed.

(5) An operator applying for a microenterprise home kitchen permit shall provide to the local health department:

(a) a written application with a statement of consent to enter the premises where food is prepared, cooked, or stored for the microenterprise home kitchen; and

(b) written standard operating procedures that include:

(i) food and food types that will be stored, handled, and prepared;

(ii) the proposed procedures and methods of food preparation and handling;

(iii) procedures, methods, and schedules for cleaning utensils and equipment;

(iv) procedures and methods for the disposal of refuse; and

(v) a plan for maintaining time or temperature control food at the appropriate temperatures for each TCS food.

(6) A local health officer may require local health department approval of the procedures and plans specified in Subsection (5)(b) before issuing a microenterprise home kitchen permit.

(7) In addition to a fee charged under Subsection (3), if the local health department is required to inspect the microenterprise home kitchen as a source of an adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result of that inspection, that the microenterprise home kitchen has produced an adulterated food or was the source of an outbreak of illness caused by a contaminated food, the local health department may charge and collect from the microenterprise home kitchen a fee for that inspection.

(8) The operator shall ensure that a microenterprise home kitchen permit:

(a) is not transferred to a location that is different from the microenterprise home kitchen described in the application and plans submitted as required in Subsection (5);

(b) is renewed on an annual basis until the operator discontinues microenterprise home kitchen operations; and

(c) is restricted to the location and hours listed on the permit application.

(9) Nothing in this rule prevents a local health officer from revoking a microenterprise home kitchen permit issued by the local health department if the operation of the microenterprise home kitchen violates the terms of:

(a) the permit

(b) this rule; or

(c) Chapter 26-15c.

(10) If a permit application is denied, or a permit is revoked, the microenterprise home kitchen operator may request information from a local health officer that includes:

(a) the specific reasons and rule citations for permit denial; and

(b) any actions the applicant must take to qualify, or requalify, for a permit.

(11) In accordance with Subsection 26-15c-105(4) and this rule, the operator shall comply with the following permit requirements:

(a) time or temperature control food shall be prepared, cooked, and served on the same day;

(b) food that is sold or provided to a consumer may not be consumed onsite at the microenterprise home kitchen operation;

(c) food that is sold or provided to a consumer shall be picked up by or delivered directly to the consumer:

(i) in a manner that protects the food from contamination as required in Section R392-106-10; and

(ii) in accordance with the time and temperature requirements specified in Section R392-106-11;

(d) food preparation may not involve processes that require a HACCP plan, or the production, service, or sale of raw milk or raw milk products;

(e) the operator may only sell or provide food directly to consumers and may not sell or provide food to any wholesaler or retailer;

(f) molluscan shellfish may not be served or sold; and

(g) the operator shall provide the consumer with a notification that, while a permit has been issued by the local health department, the kitchen may not meet all of the requirements of a commercial retail food establishment.

(12) A local health department issuing a microenterprise home kitchen permit may not require submission of plans and specifications before construction or remodel of a kitchen facility except for the plans and procedures required in Subsection (5);

(13) The local health officer shall ensure that:

(a) a microenterprise home kitchen permit includes a statement that reads, “This location is permitted under modified FDA requirements.”; and

(b) the operator is provided the opportunity to update the information required in Subsection (5)(b) without requiring the operator to renew the permit.


(1) The operator shall ensure that:

(a) materials for use on indoor floor, wall, and ceiling surfaces of a microenterprise home kitchen are smooth, durable, and easily cleanable for areas where food is stored, prepared, or held under temperature control;

(b) if used, mats and duckboards are designed to be removable and easily cleanable;

(c) physical facilities are maintained in good repair;

(d) physical facilities are cleaned as often as necessary to keep them clean and free of debris;

(e) the interior of a microenterprise home kitchen is well lit by natural or artificial light whenever food is being prepared;

(f) linens used for the microenterprise home kitchen are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment; and

(g) a microenterprise home kitchen has:

(i) at least one handwashing station installed with running hot water and cold water under pressure:

(A) provided with:

(a) [ ] warm water

[ ] hand cleaning liquid, powder, or bar soap; and

[ ] individual, disposable hand towels or other hand drying equipment as approved by the local health officer, and;

[ ] conveniently located in:

The operator shall ensure that:

1. materials that are used in the construction of utensils and food-contact surfaces of equipment are designed to retain their characteristic qualities under normal use conditions;
2. food contact surfaces are smooth, easily cleanable, and in good repair;
3. utensils are maintained in a sanitary manner between uses;
4. non-food contact surfaces are made of materials ordinarily used in residential settings and are kept clean;
5. fixed floor-mounted and table-mounted equipment are sanitized between uses;
6. sponges are not used to clean or sanitize utensils or food-contact surfaces;
7. linens are not used in contact with food;
8. ventilation in food preparation and warewashing areas is designed and maintained to allow the escape of gases, odors, steam, heat, grease, vapors, and smoke from the kitchen;
9. plumbing fixtures are kept clean from the accumulation of residue and debris;
10. except for transport not to exceed four hours, a non-mechanical container such as a cooler is not used for temperature control of TCS foods regardless of whether the container is used with or without ice or reusable ice packs;
11. an operational non-fixed temperature-measuring device is located in each mechanically refrigerated unit or hot food storage unit;
12. the microenterprise home kitchen is equipped with at least one food temperature measuring device that:
   a. has a small diameter probe;
   b. does not have sensors or stems constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such as a candy thermometer;
   c. is easily readable;
   d. is readily accessible; and
   e. is properly calibrated.
13. receptacles and waste handling units for refuse and recyclables containing materials with food residue are:
   a. durable;
   b. cleanable;
   c. insect and rodent resistant;
   d. leakproof;
   e. nonabsorbent;
   f. designed and constructed to have tight-fitting lids, doors, or covers; and
   g. maintained:
      i. covered;
      ii. in good repair; and
      iii. inaccessible to insects and rodents;
14. refuse and recyclables are removed from the microenterprise home kitchen premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents; and
15. the microenterprise home kitchen is furnished or equipped with adequate electrical power to ensure uninterrupted service during food preparation and food storage, and when storing any time or temperature control food.


The operator shall ensure that:

1. the food-contact surfaces of equipment and utensils are:
   a. clean to sight and touch;
   b. cleaned and sanitized:
      i. before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
      ii. each time there is a change from working with raw foods to working with ready-to-eat foods;
      iii. between uses with raw fruits and vegetables and with time or temperature control foods;
   c. in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
      i. at a frequency specified by the manufacturer; or
      ii. at a frequency necessary to preclude accumulation of soil or mold;
2. utensils and equipment contacting food that is not at a time or temperature control food are cleaned:
   a. at any time when contamination may have occurred; and
   b. at least every 24 hours; and
   c. in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
      i. at a frequency specified by the manufacturer; or
      ii. at a frequency necessary to preclude accumulation of soil or mold;
3. the nonfood-contact surfaces of equipment are kept free of an accumulation of dust, dirt, food residue, and other debris;
4. utensils and equipment contacting food that is not a time or temperature control food are cleaned:
   a. at any time when contamination may have occurred; and
   b. at least every 24 hours; and
   c. in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
      i. at a frequency specified by the manufacturer; or
      ii. at a frequency necessary to preclude accumulation of soil or mold;
5. when employees use a kitchen sink for dishwashing, washed utensils and equipment are rinsed, after cleaning and prior to sanitizing, by using a distinct, separate water rinse;
6. after cleaning and sanitizing, equipment and utensils are air-dried or used after adequate draining;
7. the wash, rinse, and sanitizer solutions are maintained clean;
NOTICES OF CHANGES IN PROPOSED RULES

R392-106-10. Food Safety Requirements.

1. The operator may not offer for sale:
   (a) raw animal foods kept separate from cloths used for other purposes;
   (b) dry wiping cloths and the chemical sanitizing solutions specified in Subsection R392-106-8(13)(b)(i) in which wet wiping cloths are held between uses are stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, and single-service, or single-use articles; and
   (c) single-use disposable sanitizer wipes are EPA-approved for foodservice and used in accordance with manufacturer's label directions; and
   (d) employees are provided with a test kit or other device that accurately measures the concentration in parts per million of chemical sanitizer solution.


The operator shall ensure that:

1. employees sanitize equipment and utensils in chemical manual or mechanical operations after being cleaned as required in Section R392-106-8, through the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under Subsection R392-106-9(2); and

2. chemical sanitizers, including chemical sanitizing solutions generated onsite, and other chemical antimicrobials applied to food-contact surfaces:
   (a) meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and
   (b) are used in accordance with the EPA-registered label directions.

3. the concentration of chemical sanitizer solution is maintained as follows:
   (a) chlorine sanitizer solutions has a minimum concentration and temperature of 50 to 100 ppm at 100°F with an associated contact time of 7 seconds; and
   (b) quaternary ammonium compound solutions have a minimum temperature of 75°F and a concentration as indicated by the manufacturer's label directions; and
(e)(i) raw eggs are received and maintained in a clean and sound condition, and are held in refrigerated equipment that maintains an ambient temperature of 45 degrees or less;
(ii) eggs are stored in a manner that does not allow for contamination;
(iii) eggs are not collected or stored in a previously used egg carton or package that is not designed or intended for reuse;
(iv) pasteurized eggs or egg products are substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not cooked; and
(v) raw, unpasteurized eggs are used in recipes that will not be cooked only if the microenterprise home kitchen has a consumer advisory, as required in Subsection R392-106-11(4);
(f) ice for use as a food or a cooling medium is made from potable water;
(g) ice is not used in food or beverages after use as a medium for cooling the exterior surfaces of food or food packages;
(h) food only contacts surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-106-8 and R392-106-9 or single-service and single-use articles;
(i) food is protected from contamination by storing the food in a manner that does not allow for contamination;
(j) items not ordinarily found in a home kitchen are placed or stored away from food preparation and food storage areas;
(k) food is protected from contamination by:
(i) separating raw animal foods during storage, preparation, and holding from:
(A) raw ready-to-eat food, and
(B) cooked ready-to-eat food;
(ii) separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, and holding, except when combined as ingredients, by:
(A) using separate equipment for each type of food;
(B) arranging each type of food in equipment so that cross-contamination of one type with another is prevented; and
(C) preparing each type of food at different times or in separate areas;
(iii) cleaning hermetically sealed containers of food of visible soil before opening;
(iv) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
(v) storing and segregating damaged, spoiled, or recalled food in designated areas within the microenterprise home kitchen that are separated from food, equipment, utensils, linens, and single-service and single-use articles; and
(vi) separating fruits and vegetables before they are washed from ready-to-eat food;
(I) raw fruits and vegetables are thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form;
(m) food is prepared, handled, or stored only in kitchen and food storage areas except when cooking in an open-air barbeque, grill, or outdoor wood-burning oven as permitted;
(n) except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the microenterprise home kitchen, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar are identified with the common name of the food;
(o) animals are kept outside of food preparation and storage areas;
(p) food and food contact surfaces are protected from physical hazards such as broken glass, hair or fur, and metal or wood debris;
(q) ready-to-eat food is protected from contamination during storage, preparation, handling, and transport;
(r) ready-to-eat TCS food sold outside of the microenterprise home kitchen is maintained at the proper holding temperature as required in Subsection R392-106-11(3);
(s) prior to consumption, the operator or employee provides written or verbal notification to the consumer if a food contains one or more common food allergens; and
(t) food is protected from contamination that may result from a factor or source not specified elsewhere in this rule.


The operator shall ensure that:
(1) any food requiring cooking, thawing, cooling, freezing, or reheating before sale is cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code;
(2)(a) stored frozen foods are maintained frozen, and commercially processed foods which are labeled to be kept frozen are kept frozen until cooked or sold;
(b) commercially processed foods labeled to be kept frozen that are thawed under refrigeration at 41°F or below in accordance with the manufacturer's directions:
(i) have date marking or other record keeping to indicate when the food entered refrigeration; and
(ii) are discarded seven days after entering the refrigerator;
(3) except during preparation, cooking, or cooling, time or temperature control food is maintained:
(a) at 135°F or higher, or
(b) at 41°F or lower;
(4) except for whole-muscle intact beef steak, if raw animal-derived food is sold undercooked:
(a) the consumer is notified as to which food is being sold undercooked; and
(b) the consumer is informed by way of effective written means that there is a significantly increased risk of consuming such foods;
(5)(a) ready-to-eat, TCS food prepared and held at a temperature as required in Subsection (3) is clearly marked to indicate the date or day on which the food was prepared, which is the same date on which the food shall be consumed, sold, or discarded;
(b) ready-to-eat, TCS food prepared and packaged by a food processing plant, and opened and held for more than 24 hours at a temperature as required in Subsection (3):
is clearly marked at the time the original container is opened in a microenterprise home kitchen to indicate the date or day by which the food shall be consumed, sold, or discarded, with the day the original container is opened being counted as day 1, and the day or date marked by the microenterprise home kitchen not exceeding a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety;

(6) a refrigerated, ready-to-eat, TCS food ingredient or a portion of a refrigerated, ready-to-eat, TCS food that is subsequently combined with additional ingredients or portions of food retains the date marking of the earliest-prepared or first-prepared ingredient; and

(7) a food specified in Subsection R392-106-11(5) is discarded if it:
(a) exceeds the temperature and time combination specified in Section R392-106-11, except that the product is frozen;
(b) is in a container or package that does not bear a date or day; or
(c) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in Section R392-106-11.

The operator shall ensure that:
(1) containers of poisonous or toxic materials and personal care items bear a legible manufacturer's label;
(2) working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies are clearly and individually identified with the common name of the material;
(3) poisonous or toxic materials are stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:
(a) separating the poisonous or toxic materials with spacing or partitioning; and
(b) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles;
(4) only those poisonous or toxic materials that are required for the operation and maintenance of a microenterprise home kitchen, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, are allowed in a microenterprise home kitchen;
(5) poisonous or toxic materials are:
(a) used according to:
(i) Rule R392-100 and local health department regulations;
(ii) manufacturer's label directions, and, for a pesticide, the manufacturer's label directions specify that use is allowed in a food preparation area;
(iii) the conditions of certification for use of the pest control materials; and
(iv) additional conditions that may be established by the local health officer; and
(b) applied in a manner that prevents:
(i) a hazard to employees or other persons; and
(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles;
(6) restricted use pesticides are not used in a microenterprise home kitchen unless:
(a) completed by or under the direction of a licensed Utah pesticide applicator; and
(b) pesticide application practices comply with Rule R68-7, Utah Pesticide Control Rule;
(7) a container previously used to store chemical materials is not used to store, transport, or dispense a food or beverage;
(8) rodent bait is contained in a covered, tamper-resistant bait station; and
(9) tracking powder is not be used inside of a microenterprise home kitchen unless the powder is non-toxic, such as flour or talcum powder, and is used in such a manner that it cannot contaminate food, equipment, utensils, linens, and single-service or single-use articles.

The operator shall ensure that:
(1) employees do not contact exposed, ready-to-eat food with their bare hands and use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;
(2) employees minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form;
(3) employees use single-use gloves, as needed, for only one task such as working with ready-to-eat food, for no other purpose, and discard when damaged or soiled, or when interruptions occur in the operation;
(4) employees keep their hands and exposed portions of their arms clean using the cleaning procedure specified in Subpart 2-301.12 of the FDA Food Code immediately before engaging in handling of food or clean equipment and utensils and:
(a) after touching bare human body parts other than clean hands and clean, exposed portions of arms;
(b) after using the toilet room;
(c) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
(d) after handling soiled equipment or utensils;
(e) during food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
(f) when switching between working with raw food and working with ready-to-eat food;
(g) before donning gloves to initiate a task that involves working with food; and
(h) after engaging in other activities that contaminate the hands;
(5) a sign or poster is placed near each handwashing station in a conspicuous location that notifies employees to wash their hands; and
(6) employees clean their hands in a handwashing station as required in Subsection R392-106-6(7)(a);
(7) employees keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough;
(8) employees do not wear fingernail polish or artificial fingernails when working with exposed food unless wearing intact gloves in good repair;
(9) employees do not wear jewelry including medical information jewelry on their arms and hands except for a plain ring such as a wedding band;

NOTICES OF CHANGES IN PROPOSED RULES
(10) (a) employees wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles; and
(b) employees dress or change clothing outside of the kitchen facility;
(11) employees wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting:
(a) exposed food;
(b) clean equipment, utensils, and linens; and
(c) unwrapped single-service and single-use articles;
(12) employees do not use a utensil more than once to taste food that is to be sold; and
(13) the microenterprise home kitchen is maintained free of insects, rodents, and other pests, and their presence is controlled and prevented by:
(a) routinely inspecting incoming shipments of food and supplies;
(b) routinely inspecting the microenterprise home kitchen for evidence of pests; and
(c) using pest management methods, if pests are found, such as trapping devices, eliminating harborage, or other means of pest control.

(1) The operator or the operator's designee shall be present at the microenterprise home kitchen and in charge of operations during all hours of operation.
(2) The operator or operator's designee shall ensure that:
(a) persons unnecessary to the microenterprise home kitchen operation are not allowed in the microenterprise home kitchen during food preparation;
(b) employees entering the microenterprise home kitchen comply with this rule;
(c) employees are effectively cleaning their hands as specified in Subsection R392-106-13(4);
(d) employees are visibly observing foods as they are received to determine that they are delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations;
(e) employees are properly cooking TCS food;
(f) employees are using proper methods to rapidly cool TCS food;
(g) consumers who order partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety, as required in Subsection R392-106-11(4);
(h) employees are properly sanitizing cleaned equipment and utensils;
(i) employees are preventing cross-contamination of ready-to-eat food with bare hands as specified in Subsection R392-106-13(1);
(j) employees are properly trained in food safety, as required in Subsection R392-106-4(3), including food allergy awareness;
(k) employees are informed in a verifiable manner of their responsibility to report, to the operator or operator's designee, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection R392-106-14(4); and
(l) written procedures, where required in this rule or by the local health officer, are maintained and implemented as required.
(3) The operator or operator's designee, and employees shall abide by Subpart 2-201 of the FDA Food Code in reporting of diseases, symptoms, and the exclusion or restriction of those working in the microenterprise home kitchen.

(4) Microenterprise home kitchen employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(5) A microenterprise home kitchen shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the microenterprise home kitchen. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

(1) A local health officer shall:
(a) inspect a facility that requests a microenterprise home kitchen permit only for:
(i) an initial inspection, no more than one week before the microenterprise home kitchen is scheduled to begin operation;
(ii) an unscheduled inspection, if the local health department conducts the inspection:
(A) within three days before or after the day on which the microenterprise home kitchen is scheduled to begin operation; or
(B) during operating hours of the microenterprise home kitchen; or
(iii) a subsequent inspection if:
(A) the local health department provides the operator with reasonable advanced notice of the inspection; or
(B) the local health department has a valid reason to suspect that the microenterprise home kitchen is the source of an adulterated food or of an outbreak of illness caused by a contaminated food;
(b) ensure compliance with this rule when inspecting a microenterprise home kitchen facility; and
(c) document the reason for an inspection on an inspection report form approved by the Department after the permitting inspection, keep a copy of that documentation on file with the microenterprise home kitchen's permit, and provide a copy of that documentation to the operator.
(2) When a local health officer presents proper identification and provides notice of the intent to conduct an inspection, the operator shall allow the local health officer to determine if the microenterprise home kitchen is in compliance with this rule by allowing access to the establishment, allowing inspection, and providing information and records specified in this rule.
(3) If an operator denies access to the local health officer, the local health officer shall:
(a) inform the operator that:
NOTICES OF CHANGES IN PROPOSED RULES

(i) the operator is required to allow access to the local health officer as specified under Subsection R392-106-15(2);
(ii) access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-106-5;
(iii) the permit may be revoked in accordance with Subsection R392-106-5(9); and
(iv) if access is denied, an order issued by an appropriate authority allowing access may be obtained;
(b) make a final request for access; and
(c) if the operator continues to refuse access, provide details of the denial of access on an inspection report form.
(4) The local health officer shall document at least the following on an inspection report form:
(a) specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the operator including:
(i) failure of the operator to demonstrate the knowledge of foodborne illness prevention; and
(ii) failure of employees and the operator to report a disease or medical condition as required in Subsection R392-106-14(3); and
(b) time frame for correction of violations.
(5) At the conclusion of the inspection the local health officer shall provide a copy of the completed inspection report and the notice to correct violations to the operator or the operator's designee, and request a signed acknowledgement of receipt.
(6)(a) The local health officer shall inform a person who declines to sign an acknowledgement of receipt of inspectional findings that:
(i) an acknowledgment of receipt is not an agreement with findings;
(ii) refusal to sign an acknowledgement of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames listed; and
(iii) a refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the microenterprise home kitchen; and
(b) the local health officer shall then make a final request that the operator or operator's designee sign an acknowledgement of receipt of inspectional findings.
(7) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.

(8) Repeat violations may prompt further compliance and enforcement actions, including a subsequent inspection.
(9)(a) An operator shall immediately discontinue operations and notify the local health department if an imminent health hazard exists.
(b) If operations are discontinued as required by the local health officer or in response to an imminent health hazard, the operator shall obtain approval from the local health officer before resuming operations.
(10) A local health officer may conduct subsequent inspections, as needed and in accordance with Subsection R392-106-15(1)(a)(iii), to ensure the timely resolution of inspection findings after providing the operator with reasonable advanced notice about the inspection.

The operator shall ensure that:
(1) sinks are supplied with potable hot water and cold water from:
(a) an approved public water system as defined in Section 19-4-102;
(b) a source that meets the local health department's regulations regarding the safety of drinking water if the local health department with jurisdiction over the microenterprise home kitchen has regulations regarding the safety of drinking water; or
(c) a water source that is tested at least once per month for bacteriologic quality, and at least once in every three-year period for lead and copper; and
(2) food preparation and food sales are discontinued in the event of a disruption of potable water service lasting more than ten minutes.

If any provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

KEY: microenterprise, home kitchen, food, public health
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 26-15c-105(2); 26-1-5; 26-1-30(23); 26-15-2(1)
End of the Notices of Changes in Proposed Rules Section
NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (........) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE

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<thead>
<tr>
<th>Utah Admin. Code Ref (R no.)</th>
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<td>R64-1</td>
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**Agency Information**

1. **Department:** Agriculture and Food

Agency: Conservation Commission

Street address: 350 N Redwood Road

City, state and zip: Salt Lake City, UT 84114-6500

Mailing address: PO Box 146500

City, state and zip: Salt Lake City, UT 84114-6500

**Contact person(s):**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amber Brown</td>
<td>801-982-2204</td>
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</tr>
</tbody>
</table>

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

**General Information**

2. **Rule or section catchline:**

R64-1. Agriculture Resource Development Loans

3. **Effective Date:**

09/13/2021

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

Additional language is needed in this rule to address the Emergency Disaster Relief loan program that is being created under the Agriculture Resource Development Loan (ARDL) program and will be used to provide loans to agriculture producers to address losses related to drought and other natural disasters.

5. **Summary of the new rule or change (What does this filing do?):**

A new Subsection R64-1-3(8) has been added to Section R64-1-3 allowing for the issuance of disaster related loans under the ARDL program that would not be subject to the same requirements as typical ARDL loans. This is authorized under Subsection 4-18-106(3)(g) that allows
the Utah Conservation Commission to make loans out of the ARDL fund for a "project or program to improve water quality or address other issues."

6. A) The agency finds that regular rulemaking would:

X cause an imminent peril to the public health, safety, or welfare;

cause an imminent budget reduction because of budget restraints or federal requirements; or

place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

Allowing the Utah Conservation Commission to issue disaster related loans under the ARDL program will allow them to provide much needed financial support to farmers that are facing difficulties this year due to current unprecedented drought conditions. Because of drought, many farmers have not been able to grow crops or feed their animals and loan support will help them continue to do so and keep their businesses going, benefiting them, as well as the public generally. Using an emergency rule will allow us to authorize the loans and help farmers as soon as possible and limit the damage to their businesses. The Department of Agriculture and Food (Department) is planning to make statutory changes authorizing emergency loans during the 2022 General Session, so the Department does not anticipate that this rule change will need to be permanent although rule changes may need to be written if required by legislative changes.

Fiscal Information

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

A) State budget:

Loans will initially be funded with $5,000,000 provided out of the state's Economic Assistance Fund. Some of that funding may be used to pay for administrative costs. Loans repayment is required in seven years and will start two years after the loans are issued. At this time, the Department does not have complete information regarding the need for loans so there is a chance that all of the funding may not be used.

B) Local governments:

This rule change and program should not impact local governments because they will not administer the program or be eligible to apply for loans as they are not agricultural producers.

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

This rule change and program will provide a positive fiscal impact to small businesses that receive loan funds. Loans will be capped at $100,000 per producer. The Department estimates that 90% of the loan funds will go to small businesses, or a total of $4,500,000, with the remaining benefiting non-small businesses.

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

This rule change and program will not impact other persons because they are not eligible to apply for loans and will not be involved in the administration of the program.

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

Compliance costs for affected entities will not change. Administrative costs will be charged the same way they have been under traditional ARDL loans.

F) 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 will benefit Utah businesses by providing struggling agriculture producers access to loan funds to help them keep their businesses alive during our extreme drought or other emergencies. It will not have a negative fiscal impact on businesses. Craig W. Butts, Commissioner

Citation Information

8. 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 4-18-106(3)(g)

Agency Authorization Information

Agency head or designee, and title: Craig W. Butts, Commissioner Date: 09/13/2021

R64. Agriculture and Food, Conservation Commission.
R64-1. Agriculture Resource Development Loans (ARDL).
R64-1-1. Authority and Purpose.

Pursuant to Section 4-18-105, this rule establishes general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function.

R64-1-2. Definitions.

(1) "Commission" means the Utah Conservation Commission created by Section 4-18-104, which directs and implements the Agriculture Resource Development Loan program throughout the State of Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.

(2) "ZEC" means a zone executive committee representing several conservation districts in a geographic area consisting of one
NOTICES OF 120-DAY (EMERGENCY) RULES

member from each of the conservation districts in that zone to coordinate ARDL activities.

(3) "CD Board" means a conservation district board consisting of five elected supervisors within each conservation district created by Section 4-18-105, to coordinate ARDL activities at the district level.

(4) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of the ARDL program employed by the Department of Agriculture and Food.

(5) "Technical Assistance" or "Technical Assistance Agency" means such individuals or group of individuals, including administrative services, who may be requested by an applicant client to provide specialized input for proposed projects.

(6) "Executive Committee" means a committee, made up of the commission chair and at least two other members selected from and approved by the commission, who approve applications for presentation to the commission.

(7) "Application" means a project proposal which is prepared by an individual seeking ARDL funds through the process established by the commission and in accordance with Section 4-18-105.

(8) "Resource Improvement and Management Plan" means a plan providing a schedule of operations, implementation and cost estimates, and other pertinent information prepared by a technical assistant, or technical assistance agency, which has been approved by the commission.


(1) The objectives of the ARDL program are to conserve agricultural resources of the state, increase agriculture yields and efficiency for croplands, orchards, pastures, range and livestock, maintain and improve water quality, conserve and improve wildlife habitat, prevent flooding, conserve or develop on-farm energy resources, mitigate damages to agriculture as a result of flooding, drought, or other natural disasters, and provide and maintain protection of a crop or animal resource. The commission shall annually allocate funds appropriated for projects that further these objectives.

(2) Applicant clients shall submit finalized project proposals to the loan administrator through the conservation districts for review. Applications shall be reviewed for funding by the executive committee if they exceed loan limits established by policy. Applicant clients shall comply with district, zone and commission application procedures, which are available at the district level. Applicant clients shall be investigated for credit and security as may be required by the commission including repayment capability, past and current financial holdings, fiscal obligations, and debt history. When requests are expected to exceed available funds, projects shall be rated and prioritized according to levels of quality of improvement(s) sought. Rating and approval information from ZEC committees and CD boards shall be duly considered.

(3) Loan contracts will be awarded upon receipt of executed documents, generally consisting of promissory notes and other documents that are agreed to and signed by the borrower to perfect liens on required security.

(4) When proposed projects include technical issues that are sufficiently complex, loan and technical assistance fees may be charged to clients. Some projects may require supervision by commission designated personnel.

(5) Contracts with applicant clients shall be based on repayment ability or defined collateral. Contracts shall include schedules for loan repayment according to the agreed upon interest rates and related fiscal conditions. The loan administrator may acquire appraisals and estimates of collateral values, and is authorized to obtain security or collateral in order to meet the provisions of the contract until agreed upon amounts have been collected.

(6) Projects for which funds are loaned shall be inspected and certified by commission designated personnel for compliance with contractual provisions.

(7) Under direction of the commission the loan administrator shall manage the program; interpret guidelines, administer record-keeping operations, research financial collateral security information, process and service contracts associated with program functions, recommend loan approvals to the commission, analyze resource improvement and management plans, and administer loan servicing/collection activities.

(8) The Commission may provide ARDL loan funds to agriculture producers to provide emergency disaster relief based on unusual or extraordinary circumstances such as flood, drought, or other natural disasters if:

(a) an emergency or natural disaster has been declared by an authorized federal, state, or county entity, including the Utah governor's office;

(b) the parameters of the emergency loan program are set forth in policies and procedures adopted by the Commission;

(c) the loans are approved by the Commission or a Subcommittee of the Commission; and

(d) The objectives of the loan program are consistent with those set forth in state law.

(e) Emergency loans may be exempt from the requirements of ARDL loans set forth in Section R64-1-3.

(f) Emergency loan funds may not be used for projects that would normally be approved under the ARDL program.

KEY: loans
Date of Enactment or Last Substantive Amendment: September 13, 2021
Notice of Continuation: July 23, 2019
Authorizing, and Implemented or Interpreted Law: 4-18-105
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 adminrules.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.

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### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.)</th>
<th>Filing No.</th>
</tr>
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<tbody>
<tr>
<td>R156-72</td>
<td>53287</td>
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</tbody>
</table>

#### Agency Information

1. **Department:** Commerce  
2. **Agency:** Occupational and Professional Licensing  
3. **Building:** Heber M. Wells Building  
4. **Street address:** 160 E 300 S  
5. **City, state, zip:** Salt Lake City, UT 84111-2316  
6. **Mailing address:** PO Box 146741  
7. **City, state, zip:** Salt Lake City, UT 84114-6741  
8. **Contact person(s):**  
   - **Name:** Larry Marx  
   - **Phone:** 801-530-6254  
   - **Email:** lmarx@utah.gov  

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

#### General Information

2. **Rule catchline:** R156-72. Acupuncture Licensing Act Rule  
3. **A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**  
   - Title 58, Chapter 72, provides for the licensure and regulation of acupuncturists. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Acupuncture Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 72, with respect to acupuncturists.

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:**  
   - Since this rule was last reviewed in September 2016, the Division has received no written comments with respect to 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 should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 72. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

#### Agency Authorization Information

| Agency head or designee, and title: | Mark B. Steinagel, Division Director | Date: 03/30/2021 |
**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**Utah Admin. Code Ref (R no.):** R156-75  Filing No. 50305

**Agency Information**

1. **Department:** Commerce
   
   **Agency:** Occupational and Professional Licensing
   
   **Building:** Heber M. Wells Building
   
   **Street address:** 160 E 300 S
   
   **City, state, zip:** Salt Lake City, UT 84111-2316
   
   **Mailing address:** PO Box 146741
   
   **City, state, zip:** Salt Lake City, UT 84114-6741
   
   **Contact person(s):**
   
   - **Name:** Jennifer Falkenrath
     
   - **Phone:** 801-530-7632
     
   - **Email:** jzaelit@utah.gov

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

**General Information**

2. **Rule catchline:**

   R156-75. Genetic Counselors Licensing Act Rule

3. **A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

   Title 58, Chapter 75, provides for the licensure and regulation of genetic counselors. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Genetic Counselors Licensing Board's duties, functions, and responsibilities include recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 75, with respect to genetic counselors.

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:**

   Since this rule was last reviewed in September 2016, the Division has received no written comments with respect to 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 should be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

**Agency Authorization Information**

- **Agency head or designee:** Mark B. Steinagel, Division Director
  
- **Date:** 03/18/2021

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**Utah Admin. Code Ref (R no.):** R277-106  Filing ID: 50383

**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
   
   **Mailing address:** PO Box 144200
   
   **City, state and zip:** Salt Lake City, UT 84114-4200
   
   **Contact person(s):**
   
   - **Name:** Angie Stallings
     
   - **Phone:** 801-538-7830
     
   - **Email:** angie.stallings@schools.utah.gov

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

**General Information**

2. **Rule catchline:**

   R277-106. Utah Professional Practices Advisory Commission Appointment Process

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 53E-6-503(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing Utah Professional Practices Advisory Commission (UPPAC) members.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule was approved by the Board of Education for continuation and continues to be necessary because it establishes nomination and appointment procedures for UPPAC members.

Agency Authorization Information

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 09/08/2021 |

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R277-109  Filing ID: 50385

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

Mailing address: PO Box 144200

City, state and zip: Salt Lake City, UT 84114-4200

Contact person(s):

Name: Angie Stallings

Phone: 801-538-7830

Email: angie.stallings@schools.utah.gov

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

General Information

2. Rule catchline:
R277-109. Legislative Reporting and Accountability

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-3-501(1) which directs the Board to establish rules and minimum standards for the public schools; Subsection 53E-3-401(2)(a) which gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Boards duties and responsibilities under the Utah Constitution and state law, and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with Subsection 53E-3-401(8)(a).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule was approved by the Board of Education for continuation and continues to be necessary because it requires the Superintendent to create data collection plans necessary as determined by the Superintendent to fulfill statutory or Board reporting requirements; and requires local education agencies (LEAs) to submit data upon request to the Superintendent. This rule provides that LEA participation in Minimum School Program funding is conditioned upon LEAs providing complete and accurate data and information to the Superintendent and the Board.

Agency Authorization Information

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 09/08/2021 |

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R277-113  Filing ID: 53080

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

Mailing address: PO Box 144200

City, state and zip: Salt Lake City, UT 84114-4200
**General Information**

2. **Rule catchline:**
   
   R277-113. LEA Fiscal and Auditing Policies

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; Subsection 53E-3-501(1)(e)(i) which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures; Subsection 53E-3-501(1)(e)(iv) which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements; Section 53E-3-602 which allows the Board to approve auditing standards for local education agency (LEA) governing boards; Section 53E-3-603 which requires the Board to verify accounting procedures of LEA governing boards for the purpose of determining the allocation of Uniform School Funds; Section 53E-5-202 which directs the Board to adopt rules to implement a statewide accountability system; and Subsection 53G-5-404(4) which requires charter schools to make the same annual reports required of other public schools, including an annual financial audit report; and the Every Student Succeeds Act (ESSA), which requires states to revise and redesign school accountability systems.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

   No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

   This rule was approved by the Board of Education for continuation, and continues to be necessary because it requires LEAs to formally adopt and implement policies regarding the management and use of public funds; provides minimum standards, procedures and definitions for LEA policies; directs that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; requires LEAs to train employees in appropriate financial practices; necessary accounting procedures; and ethical financial practices. It specifies uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP, GAAS, and GAGAS; and establishes reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

**Agency Authorization Information**

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<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
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<tr>
<td>Date:</td>
<td>09/08/2021</td>
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.):</th>
<th>R277-116</th>
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<tbody>
<tr>
<td>Filing ID:</td>
<td>53246</td>
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</table>

**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

   **Mailing address:** PO Box 144200

   **City, state and zip:** Salt Lake City, UT 84114-4200

   **Contact person(s):**

   | Name: Angie Stallings | Phone: 801-538-7830 | Email: angie.stallings@schools.utah.gov |

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

**General Information**

2. **Rule catchline:**

   R277-116. Audit Procedure

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 public education in the Board; Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Boards duties and responsibilities under the Utah Constitution and state law; Subsection 53E-3-501(1)(e) which directs the Board to develop rules and minimum standards regarding...
school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts; Section 53E-3-602 which allows the Board to approve auditing standards for school boards; Section 53E-3-603 which makes the Board responsible for verifying audits of local school districts; Subsection 53F-2-204(2) which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education; and Subsection 53E-3-401(9) which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule was approved by the Board of Education for continuation and continues to be necessary because it outlines the role of the Chief Audit Executive, Superintendent, and agency in the audit process; and outlines the Board's procedures for audits of agencies.

Agency Authorization Information

| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy |
| Date: | 09/08/2021 |

Contact person(s):

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<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Angie Stallings</td>
<td>801-538-7830</td>
<td><a href="mailto:angie.stallings@schools.utah.gov">angie.stallings@schools.utah.gov</a></td>
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

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 public education in the Board; Subsection 53E-3-401(4) which gives the Board authority to adopt rules in accordance with its responsibilities; Subsection 53E-3-501(1)(a)(i) which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and Subsection 53F-2-411(4) which requires the Board to establish a rule that creates the funding distribution for money appropriated to paraeducator programs.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule was approved by the Board of Education for continuation and continues to be necessary because it designates appropriate assignments of paraprofessionals and qualifications for paraprofessionals; establishes the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools; and provides minimum standards for use of funds and reporting requirements.
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**Utah Admin. Code Ref (R no.):** R277-712  
**Filing ID:** 52743

### General Information

#### 2. Rule catchline:

R277-712. Competency-based Grant Programs

#### 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Section 53F-5-502 which requires the Board to: define outcome-based measures for each type of grant awarded to local education agencies (LEAs); establish a grant application process; establish a review committee; and adopt metrics to analyze the quality of a grant application; 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:

No written comments were received.

#### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule was approved by the Board of Education for continuation and continues to be necessary because it defines outcome-based measures for each type of grant awarded to LEAs; establishes a grant application process; establishes a review committee; and adopts metrics to analyze the quality of a grant application.

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### Agency Authorization Information

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<tr>
<th>Agency head or designee, and title</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
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<tr>
<td><strong>Date:</strong></td>
<td>09/08/2021</td>
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### Agency Information

1. **Department:** Education  
2. **Agency:** Administration  
3. **Building:** Board of Education  
4. **Street address:** 250 E 500 S  
5. **City, state and zip:** Salt Lake City, UT 84111  
6. **Mailing address:** PO Box 144200  
7. **City, state and zip:** Salt Lake City, UT 84114-4200

### Contact person(s):

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Angie Stallings</td>
<td>801-538-7830</td>
<td><a href="mailto:angie.stallings@schools.utah.gov">angie.stallings@schools.utah.gov</a></td>
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Please address questions regarding information on this notice to the agency.

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### General Information

#### 2. Rule catchline:

R277-720. Reimbursement Program for Early Graduation from Competency-Based Education

#### 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; Subsection 53F-2-511(1)(c)(ii) which allows the Board to make rules to specify additional criteria for a local education agency (LEA) to be eligible for a competency-based education early graduation reimbursement; and Subsection 53F-2-511(6) which allows the Board to make rules for the administration of the Reimbursement Program for Early Graduation from Competency-Based Education.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: 

This rule was approved by the Board of Education for continuation and continues to be necessary because it sets up guidelines for administration of the Personalized, Competency-Based Learning Early Graduation Reimbursement Program, as established in Section 53F-2-511.

### Agency Authorization Information

<table>
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<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

| Utah Admin. Code Ref (R no.): | R277-914 | Filing ID: 50548 |

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**Agency Information**

1. Department: Education  
2. Agency: Administration  
3. Building: Board of Education  
4. Street address: 250 E 500 S  
5. City, state and zip: Salt Lake City, UT 84111  
6. Mailing address: PO Box 144200  
7. City, state and zip: Salt Lake City, UT 84114-4200  
8. Contact person(s): Angie Stallings  
9. Phone: 801-538-7830  
10. Email: angie.stallings@schools.utah.gov

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

---

**General Information**

2. Rule catchline: R277-914. Career and Technical Student Organizations  
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-3-507(1) which directs the Board to establish minimum standards for career and technical programs in the public education system; Subsection 53E-3-507(3) which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education; 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: No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: 

This rule was approved by the Board of Education for continuation and continues to be necessary because it makes career and technical student organizations fiscally accountable to the Board; and provides procedures and supervision toward that end.

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**Agency Authorization Information**

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<tr>
<th>Agency head or designee, and title:</th>
<th>Angie Stallings, Deputy Superintendent of Policy</th>
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<td>Date:</td>
<td>09/08/2021</td>
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

| Utah Admin. Code Ref (R no.): | R414-510 | Filing ID: 53360 |

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**Agency Information**

1. Department: Health  
2. Agency: Health Care Financing, Coverage and Reimbursement Policy  
3. Building: Cannon Health Building  
4. Street address: 288 N 1460 W  
5. City, state and zip: Salt Lake City, UT 84116  
6. Mailing address: PO Box 143102  
7. City, state and zip: Salt Lake City, UT 84114-3102  
8. Contact person(s):
Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education

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 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.

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 received written comments from providers in the health care industry and from families of Medicaid patients who reside in intermediate care facilities (ICFs). These comments were the result of an amendment to this rule in 2019 that introduced provisions to educate members and families of the transition to home and community-based services (HCBS). These services provide greater flexibility and independence for Medicaid patients who do not need or wish to remain in an institutional facility. The amendment to this rule was based on a settlement agreement with the Disability Law Center (DLC) in 2018, which advocated for educating patients and families on the Transition Program. The comments the Department received expressed concern that services for patients in ICFs would diminish with increased focus on HCBS, that patients would not have the option to remain in ICFs, and that ICFs would lack necessary funding to provide quality care. Additionally, there were concerns that ICF patients who made the transition to HCBS would not have the same safety protocols.

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 eligibility requirements for the Transition Program, includes provisions for program access, details educational aspects of the program, and establishes educational and referral requirements for individuals seeking ICF services. In response to the written comments, the Department maintains that it is committed to providing safe and quality services for patients in ICFs and HCBS settings, and that funding for both types of services shall remain.

Agency Authorization Information

Agency head or designee, and title: Nate Checketts, Executive Director
Date: 09/14/2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R628-10
Filing ID: 51523

Agency Information

1. Department: Money Management Council
Agency: Administration
Room no.: Suite 180
Building: State Capitol
Street address: 350 N State Street
City, state and zip: Salt Lake City, UT 84111
Mailing address: PO Box 142315
City, state and zip: Salt Lake City, UT 84114-2315

Contact person(s):
Name: Ann Pedroza
Phone: 801-538-1883
Email: apedroza@utah.gov

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

General Information

2. Rule catchline:

R628-10. Rating Requirements to Be a Permitted Depository

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 51-7-17(4) says that the public treasurer may invest in out of state financial institutions that meet quality criteria set up by the Money Management Council (Council) and Subsection 51-7-18(2)(b)(iv) says that the Council may write rules that govern deposits in permitted depositories.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments received either for or against since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is needed to provide criteria if a public treasurer chooses to invest public funds in out of state financial institutions to prevent undue risk to public funds. Deposits in permitted depositories are allowed in Subsection 51-7-11(3) of the Money Management Act and in Section 51-7-18 it states that the Council may make rules to govern those investments in permitted depositories. Therefore, this rule should be continued.

Agency Authorization Information
Agency head or designee, and title: Doug DeFries, Council Chair
Date: 09/02/2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
Utah Admin. Code Ref (R no.): R671-101 Filing ID: 51812

Agency Information
1. Department: Pardons (Board of)
Agency: Administration
Street address: 448 E Winchester, Suite 300
City, state and zip: Murray, UT 84107

Contact person(s):
Name: Phone: Email:
Mike Haddon 801-261-6467 mikehaddon@utah.gov

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

General Information
2. Rule catchline:
R671-101. Rules

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 77-27-9(5) specifies the general rulemaking authority of the Utah Board of Pardons and Parole (Board). It allows the Board to adopt rules for its government, meetings and hearings, conduct of proceedings, and other statutory responsibilities. Title 63G, Chapter 3, is a reference to Utah's Administrative Rulemaking Act and outlines specific rulemaking processes.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the Board regarding Rule R671-101 during or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it establishes the framework the Board will follow as it engages in the rulemaking process. Further, it makes notice that any error or defect in the application of the rules that do not impact substantial rights of a party may be disregarded and that the rules are to be interpreted with the consideration of public safety and individual rights. Therefore, this rule should be continued.

Agency Authorization Information
Agency head or designee, and title: Mike Haddon, Director of Administrative Services
Date: 08/28/2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
Utah Admin. Code Ref (R no.): R671-402 Filing ID: 51828

Agency Information
1. Department: Pardons (Board of)
Agency: Administration
Street address: 448 E Winchester, Suite 300
City, state and zip: Murray, UT 84107

Contact person(s):
Name: Phone: Email:
Mike Haddon 801-261-6467 mikehaddon@utah.gov

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

General Information
2. Rule catchline:
R671-402. Special Conditions of Parole

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 63G-3-201(2) and (3) are references to Utah's Administrative Rulemaking Act and outlines specific rulemaking processes. Section 77-27-5 provides rulemaking authority of the Utah Board of Pardons and Parole (Board) that relates to its overall statutory authority. Section 77-27-6.1 provides Board rulemaking authority related to restitution, and Section 77-27-9 provides Board rulemaking authority related to offender parole proceedings. Finally, Section 77-27-10 provides Board rulemaking authority related to establishing conditions of parole supervision, and Section 77-27-11 provides Board rulemaking authority related to revocation of parole supervision.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the Board of Pardons and parole regarding Rule R671-402 during or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it provides additional clarity to the Board's parole, parole condition setting and parole revocation processes. These are processes offenders, victims, and the public should clearly understand. This rule provides that clarity. Therefore, this rule should be continued.

<table>
<thead>
<tr>
<th>Contact person(s):</th>
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<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Mike Johnson</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>801-538-5180</td>
</tr>
<tr>
<td>Email:</td>
</tr>
<tr>
<td><a href="mailto:mjohnson@utah.gov">mjohnson@utah.gov</a></td>
</tr>
</tbody>
</table>

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<tr>
<th>Contact person(s):</th>
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<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Lisa Wells</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>801-538-5154</td>
</tr>
<tr>
<td>Email:</td>
</tr>
<tr>
<td><a href="mailto:lisawells@utah.gov">lisawells@utah.gov</a></td>
</tr>
</tbody>
</table>

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

General Information
2. Rule catchline:
R850-140. Development Property

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 53C-1-302(1)(a) authorizes the director to manage the agency in fulfillment of its purpose and establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees. Section 53C-4-101 authorizes the director to establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of trust lands. This rule allows the School and Institutional Trust Lands Administration (SITLA) to designate certain trust lands for development activities and establishes the guidelines that will facilitate development to generate optimum revenue for the Trust.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the previous five-year review filed in September 2016.

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 allows SITLA to designate lands that have development potential to generate optimum revenue for the Trust as development properties. Development transactions are very complex, and the guidelines provided in this rule allow the agency to proceed in a more traditional, business-like approach rather than a governmental-like approach. Because real estate transactions are time sensitive, SITLA needs to be able to take advantage of opportunities as they arise and respond accordingly. Therefore, this rule should be continued.

<table>
<thead>
<tr>
<th>Agency Authorization Information</th>
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<tbody>
<tr>
<td>Agency head or designee, and title:</td>
</tr>
<tr>
<td>Mike Haddon, Director of Administrative Services</td>
</tr>
<tr>
<td>Date: 09/10/2021</td>
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<tr>
<th>Agency Authority Information</th>
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<tbody>
<tr>
<td>Agency head or designee, and title:</td>
</tr>
<tr>
<td>Mike Haddon, Director of Administrative Services</td>
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<tr>
<td>Date: 09/10/2021</td>
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<tr>
<th>Agency Information</th>
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<tbody>
<tr>
<td>1. Department:</td>
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<tr>
<td>School and Institutional Trust Lands Administration</td>
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<tr>
<td>Agency:</td>
</tr>
<tr>
<td>Administration</td>
</tr>
<tr>
<td>Room no.:</td>
</tr>
<tr>
<td>Suite 500</td>
</tr>
<tr>
<td>Street address:</td>
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<tr>
<td>675 E 500 S</td>
</tr>
<tr>
<td>City, state and zip:</td>
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<tr>
<td>Salt Lake City, UT 84102-2818</td>
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</tbody>
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<tr>
<th>Agency Authorization Information</th>
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<tbody>
<tr>
<td>Agency head or designee, and title:</td>
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<tr>
<td>David Ure, Director</td>
</tr>
<tr>
<td>Date: 09/08/2021</td>
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</table>
NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION) with the Office of Administrative Rules. The EXTENSION permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed EXTENSIONS for the rules listed below. The “Extended Due Date” is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

---

**NOTICE OF FIVE-YEAR REVIEW EXTENSION**

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.):</th>
<th>Filing ID:</th>
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</thead>
<tbody>
<tr>
<td>R27-4</td>
<td>53498</td>
</tr>
</tbody>
</table>

**Agency Information**

1. Department: Government Operations

Agency: Fleet Operations

Building: TSOB

Street address: 4135 S 2700 W

City, state and zip: Taylorsville, UT 84129

Mailing address: PO Box 141117

City, state and zip: Salt Lake City, UT 84114-1117

Contact person(s):

Name: Cory Weeks

Phone: cweeks@utah.gov

Email: cweeks@utah.gov

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

**General Information**

2. Rule catchline:

R27-4. Vehicle Replacement and Expansion of State Fleet

3. Reason for requesting the extension and the new deadline date:

Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. New expiration date is 01/21/2022.

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**Agency Authorization Information**

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Cory Weeks, Director</td>
<td>09/15/2021</td>
</tr>
</tbody>
</table>

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**NOTICE OF FIVE-YEAR REVIEW EXTENSION**

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<tr>
<th>Utah Admin. Code Ref (R no.):</th>
<th>Filing ID:</th>
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<tbody>
<tr>
<td>R27-5</td>
<td>53508</td>
</tr>
</tbody>
</table>

**Agency Information**

1. Department: Government Operations

Agency: Fleet Operations

Building: TSOB

Street address: 4135 S 2700 W, Third Floor

City, state and zip: Taylorsville, UT 84129

Mailing address: PO Box 141117

City, state and zip: Salt Lake City, UT 84114-1117

Contact person(s):

Name: Cory Weeks

Phone: cweeks@utah.gov

Email: cweeks@utah.gov

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

**General Information**

2. Rule catchline:

R27-5. Fleet Tracking

3. Reason for requesting the extension and the new deadline date:

Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. New expiration date is 01/21/2022.

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**Agency Authorization Information**

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Cory Weeks, Director</td>
<td>09/15/2021</td>
</tr>
</tbody>
</table>
NOTICE OF FIVE-YEAR REVIEW EXTENSION

Utah Admin. Code Ref (R no.): R27-6  Filing ID: 53509

Agency Information
1. Department: Government Operations
Agency: Fleet Operations
Building: TSOB
Street address: 4135 S 2700 W, Third Floor
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 141117
City, state and zip: Salt Lake City, UT 84114-1117
Contact person(s):
Name: Cory Weeks
Phone: cweeks@utah.gov
Email: cweeks@utah.gov

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

General Information
2. Rule catchline:
R27-6. Fuel Dispensing Program
3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. The new expiration date is 01/21/2022.

Agency Authorization Information
Agency head or designee, and title: Cory Weeks, Director
Date: 09/15/2021

NOTICE OF FIVE-YEAR REVIEW EXTENSION

Utah Admin. Code Ref (R no.): R27-8  Filing ID: 53502

Agency Information
1. Department: Government Operations
Agency: Fleet Operations
Building: TSOB
Street address: 4135 S 2700 W, Third Floor
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 141117
City, state and zip: Salt Lake City, UT 84114-1117
Contact person(s):
Name: Cory Weeks
Phone: cweeks@utah.gov
Email: cweeks@utah.gov

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

General Information
2. Rule catchline:
R27-8. State Vehicle Maintenance Program
3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. The new expiration date is 01/21/2022.

Agency Authorization Information
Agency head or designee, and title: Cory Weeks, Director
Date: 09/15/2021

NOTICE OF FIVE-YEAR REVIEW EXTENSION

Utah Admin. Code Ref (R no.): R27-9  Filing ID: 53503

Agency Information
1. Department: Government Operations
Agency: Fleet Operations
Building: TSOB
Street address: 4135 S 2700 W, Third Floor
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 141117
City, state and zip: Salt Lake City, UT 84114-1117
Contact person(s):
Name: Cory Weeks
Phone: cweeks@utah.gov
Email: cweeks@utah.gov

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

General Information
2. Rule catchline:
R27-9. Dispensing Compressed Natural Gas to the Public
3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. The new expiration date is 01/21/2022.
### NOTICE OF FIVE-YEAR REVIEW EXTENSION

**Utah Admin. Code Ref (R no.):** R27-10  
**Filing ID:** 53504

**Agency Information**

1. **Department:** Government Operations  
2. **Agency:** Fleet Operations  
3. **Building:** TSOB  
4. **Street address:** 4135 S 2700 W, Third Floor  
5. **City, state and zip:** Taylorsville, UT 84129  
6. **Mailing address:** PO Box 141117  
7. **City, state and zip:** Salt Lake City, UT 84114-1117  
8. **Contact person(s):**  
   - Name: Cory Weeks  
   - Phone:  
   - Email: cweeks@utah.gov  

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

**General Information**

2. **Rule catchline:** R27-10. Identification Mark for State Motor Vehicles  
3. **Reason for requesting the extension and the new deadline date:**  
   Due to personnel changes, Fleet Operations needs more time to do the five-year review before the deadline. The new expiration date is 01/21/2022.

**Agency Authorization Information**

**Agency head or designee, and title:** Cory Weeks, Director  
**Date:** 09/15/2021

---

### NOTICE OF FIVE-YEAR REVIEW EXTENSION

**Utah Admin. Code Ref (R no.):** R131-10  
**Filing ID:** 50216

**Agency Information**

1. **Department:** Capitol Preservation Board (State)  
2. **Agency:** Administration  
3. **Building:** Utah State Capitol Complex  
4. **Street address:** 350 N State St  
5. **City, state and zip:** Salt Lake City, UT 84114  
6. **Contact person(s):**  
   - Name: Dana M. Jones  
   - Phone: 801-538-1189  
   - Email: danajones@utah.gov  

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

**General Information**

2. **Rule catchline:** R131-10. Commercial Solicitations
3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, the Capitol Preservation Board needs more time to do the five-year review before the deadline. The new expiration date is 01/18/2022.

Agency Authorization Information
Agency head or designee, and title: Dana M. Jones, Executive Director
Date: 09/15/2021

NOTICE OF FIVE-YEAR REVIEW EXTENSION
Utah Admin. Code Ref (R no.): R131-11
Filing ID: 50219

Agency Information
1. Department: Capitol Preservation Board (State)
2. Agency: Administration
3. Building: Utah State Capitol Complex
4. Street address: 350 N State St
5. City, state and zip: Salt Lake City, UT 84114

Contact person(s):
Name: Dana M. Jones
Phone: 801-538-1189
Email: danajones@utah.gov

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

General Information
2. Rule catchline:
R131-11. Preservation of Free Speech Activities

3. Reason for requesting the extension and the new deadline date:
Due to personnel changes, the Capitol Preservation Board needs more time to do the five-year review before the deadline. The new expiration date is 01/18/2022.

Agency Authorization Information
Agency head or designee, and title: Dana M. Jones, Executive Director
Date: 09/15/2021

End of the Notices of Five-Year Review Extensions Section
NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **Proposed Rules** or **Changes in Proposed Rules** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **Notice of Effective Date** within 120 days from the publication of a **Proposed Rule** or a related **Change in Proposed Rule**, the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**Notices of Effective Date** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

<table>
<thead>
<tr>
<th>Agency and Food Administration</th>
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<tbody>
<tr>
<td>No. 53652 (Repeal and Reenact) R51-4: ADA Compliant Procedure</td>
</tr>
<tr>
<td>Published: 07/15/2021</td>
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<tr>
<td>Effective: 09/01/2021</td>
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<table>
<thead>
<tr>
<th>Animal Industry</th>
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<tbody>
<tr>
<td>No. 53678 (Amendment) R58-1: Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals</td>
</tr>
<tr>
<td>Published: 08/01/2021</td>
</tr>
<tr>
<td>Effective: 09/08/2021</td>
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<thead>
<tr>
<th>Plant Industry</th>
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<tbody>
<tr>
<td>No. 53549 (Repeal and Reenact) R68-7: Utah Pesticide Control Rule</td>
</tr>
<tr>
<td>Published: 06/01/2021</td>
</tr>
<tr>
<td>Effective: 09/01/2021</td>
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</table>

| No. 53549 (Change in Proposed Rule) R68-7: Utah Pesticide Control Rule |
| Published: 08/01/2021 |
| Effective: 09/01/2021 |

| No. 53567 (Amendment) R68-29: Quality Assurance Testing on Cannabis |
| Published: 07/01/2021 |
| Effective: 09/01/2021 |

| No. 53567 (Change in Proposed Rule) R68-29: Quality Assurance Testing on Cannabis |
| Published: 08/01/2021 |
| Effective: 09/01/2021 |

| No. 53637 (Repeal) R68-31: Cannabis Licensing Process |
| Published: 07/15/2021 |
| Effective: 09/01/2021 |

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<th>Regulatory Services</th>
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<tbody>
<tr>
<td>No. 53624 (New Rule) R68-36: Industrial Hemp Testing Laboratory</td>
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<tr>
<td>Published: 07/15/2021</td>
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<tr>
<td>Effective: 09/01/2021</td>
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<tr>
<th>Education Administration</th>
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<tbody>
<tr>
<td>No. 53648 (Amendment) R277-726: Statewide Online Education Program</td>
</tr>
<tr>
<td>Published: 08/15/2021</td>
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<tr>
<td>Effective: 09/22/2021</td>
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<th>Environmental Quality Air Quality</th>
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<tbody>
<tr>
<td>No. 53562 (Amendment) R307-840: Lead-Based Paint Program Purpose, Applicability, and Definitions</td>
</tr>
<tr>
<td>Published: 07/01/2021</td>
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<tr>
<td>Effective: 09/01/2021</td>
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| No. 53563 (Amendment) R307-841: Residential Property and Child-Occupied Facility Renovation |
| Published: 07/01/2021 |
| Effective: 09/01/2021 |

| No. 53564 (Amendment) R307-842: Lead-Based Paint Activities |
| Published: 07/01/2021 |
| Effective: 09/01/2021 |
NOTICES OF RULE EFFECTIVE DATES

Environmental Response and Remediation
Published: 07/01/2021
Effective: 09/13/2021

No. 53577 (Amendment) R311-201: Underground Storage Tanks: Certification Programs and UST Operator Training
Published: 07/01/2021
Effective: 09/13/2021

No. 53580 (Amendment) R311-203: Underground Storage Tanks: Technical Standards
Published: 07/01/2021
Effective: 09/13/2021

No. 53581 (Amendment) R311-204: Underground Storage Tanks: Closure and Remediation
Published: 07/01/2021
Effective: 09/13/2021

No. 53582 (Amendment) R311-205: Underground Storage Tanks: Site Assessment Protocol
Published: 07/01/2021
Effective: 09/13/2021

Published: 07/01/2021
Effective: 09/13/2021

No. 53584 (Amendment) R311-207: Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks
Published: 07/01/2021
Effective: 09/13/2021

No. 53585 (Amendment) R311-208: Underground Storage Tank Penalty Guidance
Published: 07/01/2021
Effective: 09/13/2021

No. 53586 (Amendment) R311-209: Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation
Published: 07/01/2021
Effective: 09/13/2021

No. 53587 (Amendment) R311-212: Administration of the Petroleum Storage Tank Loan Program
Published: 07/01/2021
Effective: 09/13/2021

Waste Management and Radiation Control, Radiation
No. 53543 (Amendment) R313-19: Transportation
Published: 06/15/2021
Effective: 09/13/2021

Government Operations
Finance
No. 53749 (Amendment) R25-2: Finance Adjudicative Proceedings
Published: 08/15/2021
Effective: 09/21/2021

Records Committee
No. 53712 (Amendment) R35-1: Procedures for Appeal Hearings
Published: 08/01/2021
Effective: 09/08/2021

Governor
Economic Opportunity
No. 53767 (New Rule) R357-40: Broadband Access Grant Program Rule
Published: 08/15/2021
Effective: 09/22/2021

No. 53759 (New Rule) R357-41: Utah Main Street Program Rule
Published: 08/15/2021
Effective: 09/22/2021

Health
Family Health and Preparedness, Emergency Medical Services
No. 53578 (Amendment) R426-4: Licensed Ground Ambulance, Designated QRU, and Designated Nonemergency Secured Behavioral Health Transport Staffing
Published: 07/01/2021
Effective: 09/16/2021

Insurance
Administration
No. 53752 (Amendment) R590-94: Smoker and Nonsmoker Mortality Tables for Determining Minimum Reserve Liabilities and Nonforfeiture Benefits
Published: 08/15/2021
Effective: 09/22/2021

No. 53753 (Amendment) R590-95: Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables
Published: 08/15/2021
Effective: 09/22/2021

No. 53754 (Amendment) R590-96: Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities
Published: 08/15/2021
Effective: 09/22/2021

Title and Escrow Commission
No. 53742 (Amendment) R592-7: Title Insurance Continuing Education
Published: 08/01/2021
Effective: 09/08/2021
No. 53743 (Amendment) R592-11: Title Insurance Producer Annual Reports
Published: 08/01/2021
Effective: 09/08/2021

Judicial Performance Evaluation Commission
Administration
No. 53471 (Amendment) R597-3: Judicial Performance Evaluations
Published: 06/01/2021
Effective: 09/22/2021

Labor Commission
Adjudication
No. 53711 (Amendment) R602-1: Official Record
Published: 08/01/2021
Effective: 09/08/2021

No. 53751 (Amendment) R602-2: Compensation for Medical Panel Services
Published: 08/15/2021
Effective: 09/22/2021

No. 53700 (Amendment) R602-2: Adjudicative Process
Published: 08/01/2021
Effective: 09/08/2021

Occupational Safety and Health
No. 53701 (Amendment) R614-1: Incorporation of Federal Standards
Published: 08/01/2021
Effective: 09/08/2021

Boiler, Elevator and Coal Mine Safety
No. 53702 (Amendment) R616-3: Safety Codes for Elevators
Published: 08/01/2021
Effective: 09/08/2021

Public Safety
Highway Patrol
No. 53710 (New Rule) R714-165: Standards for School Buses
Published: 08/01/2021
Effective: 09/08/2021

Peace Officer Standards and Training
No. 53740 (Amendment) R728-403: Procedures for Certification
Published: 08/01/2021
Effective: 09/08/2021

School and Institutional Trust Lands
Administration
No. 53745 (Amendment) R850-6: Government Records Access and Management
Published: 08/01/2021
Effective: 09/08/2021

No. 53747 (New Rule) R850-13: Confidential Treatment of Proprietary Information
Published: 08/01/2021
Effective: 09/08/2021

Workforce Services
Unemployment Insurance
No. 53602 (Amendment) R994-204-405: Remote Service Marketplace Platforms
Published: 07/01/2021
Effective: 09/09/2021

End of the Notices of Rule Effective Dates Section