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.
# TABLE OF CONTENTS

## EXECUTIVE DOCUMENTS

PROCLAMATION (Calling the Sixty-fourth Legislature into a Second Special Session) ......................................................... 1

## NOTICES OF PROPOSED RULES

3

## GOVERNMENT OPERATIONS

### Administration

- R13-5. Use of Electronic Meetings for the Government Operations Rate Committee .............................................. 4
- R13-10. State Entities’ Posting of Financial Information to the Utah Public Finance Website ................................................. 6

### Facilities Construction and Management

- R23-1. Procurement Rules with Numbering Related to the Procurement Code .............................................................. 8

### Fleet Operations

- R27-4. Vehicle Replacement and Expansion of State Fleet ................................................................................................. 29
- R27-9. Dispensing Compressed Natural Gas to the Public ................................................................................................. 37

## COMMERCE

### Consumer Protection

- R152-23. Health Spa Services Protection Act Rule ................................................................................................................. 39
- R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule ...................................................... 44

### Occupational and Professional Licensing

- R156-31b. Nurse Practice Act Rule ........................................................................................................................................... 47
- R156-47b. Massage Therapy Practice Act Rule ......................................................................................................................... 61

## CORRECTIONS

### Administration

- R251-713. Jail Contracting Funds ............................................................................................................................................ 66

## CRIME VICTIM REPARATIONS

### Administration

- R270-1. Award and Reparations Standards .............................................................................................................................. 69

## HEALTH

### Health Care Financing, Coverage and Reimbursement Policy

- R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program ......................................................................................................................... 77
- R414-523. Extraordinary Care Definition for Spousal Caregiver Compensation ......................................................................................... 83

### Family Health and Preparedness, Primary Care and Rural Health

- R434-45. Rural Physician Loan Repayment Program Rules ................................................................................................. 85
- R434-50. Assistance for People with Bleeding Disorders ................................................................................................. 88
# TABLE OF CONTENTS

## CULTURAL AND COMMUNITY ENGAGEMENT
- STEM Action Center
  - R459-1. Education Computing Partnerships ................................................................. 90

## HUMAN SERVICES
- Recovery Services
  - R527-800. Acquisition of Real Property, and Medical Support Cooperation Requirements ........ 92
- Juvenile Justice Services
  - R547-2. Credit for Good Behavior ................................................................................ 94
  - R547-3. Juvenile Jail Standards ..................................................................................... 96
  - R547-7. Juvenile Holding Room Standards .................................................................. 100
  - R547-10. Ex-Offender Policy ....................................................................................... 103
  - R547-11. Guidelines for the Transfer to the Department of Corrections of a Youthful Prisoner Provisionally Housed in a Juvenile Justice Services
    - Secure Care Facility ................................................................................................. 105
  - R547-12. Division of Juvenile Justice Services Classification of Records ....................... 108

## INSURANCE
- Administration
  - R590-267. Personal Injury Protection Relative Value Study ................................................ 112
- Title and Escrow Commission
  - R592-15. Submission of a Schedule of Minimum Charges for Escrow Services ................ 115
  - R592-16. Prohibited Escrow Settlement Closing Transactions ........................................ 120
  - R592-17. Requirements for an Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits ................................................................. 122

## LABOR COMMISSION
- Industrial Accidents
  - R612-300-4. General Method for Computing Medical Fees ................................................ 125

## PUBLIC SAFETY
- Administration
  - R698-4. Certification of the Law Enforcement Agency of a Private College or University .......... 127
- Driver License
  - R708-41. Requirements for Acceptable Documentation, Storage and Maintenance ................... 132
  - R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language ........... 139
  - R708-53. Driver Education Instructor Preparation Course Requirements ............................. 142
- Fire Marshal
  - R710-16. Rules Pursuant to Fire Service Certification and Nonaffiliated Training Organizations .................................................................................................................. 146
TABLE OF CONTENTS

Highway Patrol
  R714-510. 24-7 Sobriety Program ................................................................. 151

Peace Officer Standards and Training
  R728-507. Minimum Standards for Use of Force Policies to be Adopted by
  Public Safety Agencies That Employ Peace Officers ........................................ 155
  R728-508. Police Service Patrol and SWAT Canine Training, Certification,
  and Recertification Standards ........................................................................... 159

PUBLIC SERVICE COMMISSION
  Administration
    R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF) ..................... 161

TRANSPORTATION
  Motor Carrier
    R909-1. Safety Regulations for Motor Carriers ............................................. 170

WORKFORCE SERVICES
  Administration
    R982-502. Low-income ADU Loan Guarantee Pilot Program .......................... 172
  Housing and Community Development
    R990-200. Private Activity Bonds ................................................................ 175

NOTICES OF 120-DAY (EMERGENCY) RULES ................................................. 183

HEALTH
  Health Care Financing, Coverage and Reimbursement Policy
    R414-524. American Rescue Plan Act, Home and Community-Based
    Services Enhanced Funding ............................................................................ 183

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION .......... 187

COMMERCE
  Occupational and Professional Licensing
    R156-40a. Athletic Trainer Licensing Act Rule ........................................... 187
    R156-41. Speech-Language Pathology and Audiology Licensing Act Rule ................................ 188

ENVIRONMENTAL QUALITY
  Waste Management and Radiation Control, Radiation
    R313-15. Standards for Protection Against Radiation .................................... 188
    R313-21. General Licenses ............................................................................ 189
      Requirements ................................................................................................. 190
    R313-30. Therapeutic Radiation Machines .................................................... 191
    R313-34. Requirements for Irradiators .......................................................... 191
TABLE OF CONTENTS

R313-35. Requirements for X-Ray Equipment Used for Non-Medical Applications.................................192
R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
R313-38. Licenses and Radiation Safety Requirements for Well Logging...................................................193

HEALTH

Disease Control and Prevention, Environmental Services
R392-100. Food Service Sanitation............................................................................................................194
R392-300. Recreation Camp Sanitation.....................................................................................................195
R392-301. Recreational Vehicle Park Sanitation.........................................................................................196
R392-302. Design, Construction and Operation of Public Pools...............................................................196
R392-400. Temporary Mass Gathering Sanitation.......................................................................................197
R392-402. Manufactured Home Community Sanitation............................................................................197
R392-501. Temporary Labor Community Sanitation..................................................................................198
R392-502. Public Lodging Facility Sanitation.............................................................................................199

HEALTH

Health Care Financing, Coverage and Reimbursement Policy
R414-10. Physician Services......................................................................................................................199

INSURANCE

Administration
R590-91. Credit Life Insurance and Credit Accident and Health Insurance.............................................200

NOTICES OF RULE EFFECTIVE DATES .......................................................................................................201
Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues EXECUTIVE DOCUMENTS, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

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

PROCLAMATION

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

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

NOW, THEREFORE, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-fourth Legislature of the State of Utah into a Second Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 9th day of November 2021, at 10:30 a.m., to consider the following:

1. to address redistricting and to divide the state into congressional, legislative and other districts pursuant to Utah Constitution Article IX, Section 1;
2. to consider amendments to the statutes governing the State Flag Task Force;
3. to consider changing the name of Dixie State University and to create a reporting requirement to the Legislature;
4. to consider modifying the deadlines for filing a declaration of candidacy, holding a convention, and signature gathering, and clarifying provisions of code that relate to the schedule for redistricting local school board districts;
5. to consider making changes to the pretrial process on issues related to bail, pretrial release, and indigent defense;
6. to consider modifying the Unemployment Insurance tax rate for calendar years 2022, 2023, and 2024;
7. to consider provisions related to COVID-19 and the workplace;
8. to consider amendments to the Interlocal Cooperation Act; and
9. to consider a resolution expressing the Legislature’s opinion about certain banking and financial transaction reporting requirements under consideration by Congress and the federal government.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 5th day of November 2021.

(State Seal)

Spencer J. Cox
Governor

ATTEST:

Deidre M. Henderson
Lieutenant Governor
End of the Executive Documents Section
NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a substantive change to an existing rule. With a NOTICE OF PROPOSED RULE, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 16, 2021, 12:00 a.m., and November 01, 2021, 11:59 p.m., are included in this, the November 15, 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 December 15, 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 March 15, 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.
NOTICE OF PROPOSED RULE

TYPE OF RULE: New
Utah Admin. Code Ref (R no.): R13-5 Filing ID 54065

General Information
1. Department: Government Operations
Agency: Administration
Building: Taylorsville State Office Building
Street address: 4315 S 2700 W
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 141002
City, state and zip: Salt Lake City, UT 84114-1002

Contact person(s):
Name: Phone: Email:
Kenneth A. Hansen 801- 957-7173 khansen@utah.gov

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

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

A) State budget:
There will be no cost or savings to the state budget. The ability to participate electronically or telephonically in meetings is readily available to all state agencies.

B) Local governments:
There will be no cost or savings to local governments. This rule only addresses procedures related to members of the committee participating electronically or telephonically in meetings.

C) Small businesses ("small business" means a business employing 1-49 persons):
There will be no cost or savings to small businesses. This rule only addresses procedures related to members of the committee participating electronically or telephonically in meetings.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There will be no cost or savings to non-small businesses. This rule only addresses procedures related to members of the committee participating electronically or telephonically in meetings.

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 will be no cost or savings to other persons. This rule only addresses procedures related to members of the committee participating electronically or telephonically in meetings.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There will be no compliance cost for affected persons. The only persons affected by this rule are state employees. State agencies who have members on the committee will not bear additional costs to participate in meetings.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
This rule does not affect businesses. There is no fiscal impact on businesses. Jenney Rees, 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

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<thead>
<tr>
<th>Fiscal Cost</th>
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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 52-4-207 | Section 63A-1-114

### 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: **12/15/2021**

### 10. This rule change MAY become effective on: **12/22/2021**

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: | Jenney Rees, Executive Director | Date: 11/01/2021 |


**R13-5. Use of Electronic Meetings for the Government Operations Rate Committee.**

**R13-5-1. Purpose and Authority.**

(1) Purpose. The Rate Committee (committee) created by Section 63A-1-114 is required to comply with the Open and Public Meetings Act, Title 52, Chapter 4. The committee recognizes that there may be times when members may need to appear telephonically or electronically as permitted by Section 52-4-207.

(2) Authority. Section 52-4-207 requires a public body that convenes or conducts an electronic meeting to establish a rule for such meetings. This rule establishes procedures for conducting committee meetings by electronic means. This rule is enacted under the authority of Subsection 52-4-207(2).

**R13-5-2. Definitions.**

Terms used in this rule are defined in Section 52-4-103.

**R13-5-3. Procedure.**

(1) Electronic meetings of the committee are governed by Subsection 52-4-207(3).

(2) As permitted by Subsection 52-4-207(2), the following provisions govern any meeting at which one or more committee members appear telephonically or electronically:

(a) If one or more members of the committee participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notices shall specify the anchor location where the members of the committee who are not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted in accordance with Subsection 52-4-202(3). Notice shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the committee members at least 24 hours before the meeting. In addition, the notice shall describe how a committee member may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a committee member appearing electronically or telephonically, any member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the committee. At the commencement of the meeting, or at such time as any member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the committee
who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the Taylorsville State Office Building, Floor 3, 4315 South 2700 West, Taylorsville, UT 84129. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(f) The committee may convene and conduct an electronic meeting without an anchor location if the chair makes a written determination that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location and complies with Subsection 52-4-207(5).

KEY: rate committee, electronic meetings, OPMA

Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implementing or Interpreted Law: 52-4-207; 63A-1-114

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R13-10 Filing ID 54066

Agency Information

1. Department: Government Operations
Agency: Administration
Building: Taylorsville State Office Building
Street address: 4315 S 2700 W
City, state and zip: Taylorsville, UT 84129
Mailing address: PO Box 141002
City, state and zip: Salt Lake City, UT 84114-1002

Contact person(s):
Name: Kenneth A. Hansen
Phone: 801-957-7173
Email: khansen@utah.gov

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

General Information

2. Rule or section catchline:
R13-10. State Entities’ Posting of Financial Information to the Utah Public Finance Website

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
H.B. 27 passed in the 2021 General Session removed the responsibility for maintaining a public finance website from the Department of Administrative Services and transferred it to the State Auditor.

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 established procedures related to the posting of the participating state entities’ financial information to the Utah Public Finance Website.

Fiscal Information

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

A) State budget:
There will be no cost or savings to the state budget. Authority for the program is transferred to the State Auditor’s office and continues.

B) Local governments:
There will be no cost or savings to local governments. Authority for the program is transferred to the State Auditor’s office and continues.

C) Small businesses (“small business” means a business employing 1-49 persons):
There will be no cost or savings to small businesses. Authority for the program is transferred to the State Auditor’s office and continues.

D) Non-small businesses (“non-small business” means a business employing 50 or more persons):
There will be no cost or savings to non-small businesses. Authority for the program is transferred to the State Auditor’s office and continues.

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 will be no cost or savings to other persons. Authority for the program is transferred to the State Auditor’s office and continues.

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 change in compliance costs for affected persons. Authority for the program is transferred to the State Auditor’s office and continues.
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 function was transferred to the Auditor's Office by legislative action. The repeal of this rule does not create costs or savings for businesses. Jenney Rees

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 Government Operations, Jenney Rees, 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:

(1) Each participating state entity shall submit detail revenue and expense transactions from its general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The Division shall submit the detail transactions for all participating state entities that are recorded in the general ledger of the State, FINET.

(2) Each participating state entity shall submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The Division shall submit the employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division.

(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:

(i) total wages or salary;

(ii) total benefits, benefit detail that is protected by Subsection 63G-2-302(1)(g) may not be disaggregated;

(iii) incentive awards;

(iv) taxable allowances and reimbursements; and

(v) leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.

(b) In addition, the following information will be submitted for each employee:

(i) name;

(ii) hourly rate for those employees paid on an hourly basis; and

(iii) job title

(3) An entity may not submit any data to the UPFW that is classified as private, protected, or controlled by Sections 63G-2-302, 63G-2-304, and 63G-2-305 or any other statute. All detail transactions or records are required to be submitted; however, the words "redacted" or "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R13-10.5. UPFW Data Submission Procedures.

(1) Each entity must submit data to the UPFW according to the file specifications listed below.

(a) The public financial information required in Section R13-10-4 shall be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Office and is posted on the UPFW under the Helps and FAQs tab.

(b) Data shall be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.

(c) Each transaction submitted to the website must contain the information required in the detail file layout including:

(i) Organization - Categorizes transactions within the entity's organization structure. If applicable, at least two levels of organization will be submitted but not more than 10 levels.

(ii) Category - Categorizes transactions and further describes the transaction type. If applicable, at least two levels of category will be submitted but not more than seven levels.

(iii) Fund - Categorizes transactions by fund types and individual funds. At least one but not more than four levels of fund will be submitted.

KEY: Utah - Public - Financial - Website, transparency, state employees, finance

Date of Last Change: December 23, 2019

Authorizing, and Implemented or Interpreted Law: 63A-1-204

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R23-1 Filing ID 54077

Agency Information

1. Department: Government Operations

Building: Taylorsville State Office Building

Street address: 4315 S 2700 W FL 3

City, state and zip: Taylorsville, UT 84129-2128

Mailing address: PO Box 141160

City, state and zip: Salt Lake City, UT 84114-1160

Contact person(s):

Name: Phone: Email:

Mike Kelley 801-957-7239 mkelley@agutah.gov

Michelle Adams 801-957-7240 michelledadams@agutah.gov

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

General Information

2. Rule or section catchline:

R23-1. Procurement Rules with Numbering Related to the Procurement Code

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

(Why is the agency submitting this filing?):

The Utah Procurement Code, Title 63G, Chapter 6a, has been amended several times (July 1, 2021, May 5, 2021, March 16, 2021, June 25, 2020, May 12, 2020, May 8, 2018, October 1, 2016, May 10, 2016, and March 28, 2016) since Rule R23-1 was last amended (March 3, 2015) and Rule R23-1 is no longer in conformance with the current Utah Procurement Code. The amendments to R23-1 are necessary to synchronize Rule R23-1 with the current Utah Procurement Code.

4. Summary of the new rule or change

(What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment: 1) deletes defined terms that are never used; 3) renumbers subsections to conform to the arrangement of the current Utah Procurement Code; 2) updates statutory references to conform to the current Utah Procurement Code; 3) increases monetary thresholds for approved vendor lists and small purchases of commodities, architectural and engineering services and construction projects; 4) deletes subsections related to procurement methods (Multiple Stage Bidding / Multiple Stage Request for Proposals) no longer referenced in the current Utah Procurement Code; 5) revises language related to protection of protected records to conform to the current version of the Utah Governmental Records and Management Act (Title 63G, Chapter 2); 6) provides language related to procurement of items used for or in connection with the establishment of Department of Alcoholic Beverage Control stores as required by the current version of the Utah Procurement Code; 7) deletes redundant language that merely restates the requirements of the Utah Procurement Code; and 8) deletes language related to bias not required or authorized by the Utah Procurement Code.

### 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--Rule R23-1 effectuates the Division of Facilities Construction and Management's (DFCM) statutorily mandated compliance with the requirements of the Utah State Procurement Code. Rule R23-1 has no aggregate anticipated cost or savings to the state budget not inherent in the existing requirements of the Utah Procurement Code.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B) Local governments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>None--Rule R23-1 applies only to DFCM, not to local governments, and Rule R23-1 has no impact on DFCM's procurement, if any, of procurement items from local governments.</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--While the thresholds for approved vendor lists and small purchases for commodities, architect and engineer services and construction projects have been raised, which arguably might be seen as favoring non-small businesses over small businesses, the cost of commodities, architect and engineering services and construction projects have undergone substantial, industry wide increases since Rule R23-1 was last amended and it is therefore unlikely that the increased thresholds will impact the existing parity between small businesses and non-small businesses.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<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--While the thresholds for approved vendor lists and small purchases for commodities, architect and engineer services and construction projects have been raised, which arguably might be seen as favoring non-small businesses over small businesses, the cost of commodities, architect and engineering services and construction projects have undergone substantial, industry wide increases since Rule R23-1 was last amended and it is therefore unlikely that the increased thresholds will impact the existing parity between small businesses and non-small businesses.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<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>
</thead>
<tbody>
<tr>
<td>None--There are no anticipated fiscal impacts to persons other than small businesses, non-small businesses, state, or local government entities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<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>
</thead>
<tbody>
<tr>
<td>None--Rule R23-1 imposes no anticipated compliance cost on affected persons (primarily contractors or vendors) not inherent in the existing requirements of the Utah Procurement Code.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>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):</th>
</tr>
</thead>
<tbody>
<tr>
<td>I concur with the statements in Boxes 5C, 5D, and 5F above. Jenney Rees, Executive Director</td>
</tr>
</tbody>
</table>

### 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>
<tr>
<td>Non-Small Businesses</td>
</tr>
<tr>
<td>Other Persons</td>
</tr>
</tbody>
</table>
Agency Authorization Information

**Agency head or designee, and title:**

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>James R. Russell, Director</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date:</strong></td>
<td>10/28/2021</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:**

| Date: | 12/15/2021 |

10. **This rule change MAY become effective on:**

| Date: | 12/22/2021 |

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.

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 63A-5b-305(2)(c)

Total Fiscal Cost | Fiscal Benefits | Net Fiscal Benefits |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<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 |

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

R23. **Government Operations, Facilities Construction and Management.**


R23-1-101. **Scope of the Rules and Compliance by Using Agencies.**

1. Rule R23-1 applies to procurements by the Division of Facilities Construction and Management. This includes the procurement of construction, architects, engineers, design services and all other professional services and procurements related to design or construction by the Division of Facilities Construction and Management as well as other procurement items within the rule authorization of the Division of Facilities Construction and Management. Using Agencies are required to comply with these rules to the extent required by the Utah Code.

2. The statutory provisions governing the procurement referred to in R23-1-101(1) above are provided in the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code as well as Title 63A, Chapter 5b of the Utah Code.


Terms used in this R23-1 are defined in Section[4] 63G-6a-103 and 104 of the Utah Procurement Code. In addition:

| (1) | "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs. |
| (2) | "Adequate Price" Competition means: |
| (3) | "Acquiring Agency" is a conducting procurement unit subject to Section 63A-16-205 acquiring new technology or technology as therein defined. |
| (4) | "Bid Bond" is an agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount. |
| (5) | "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks. |
| (6) | "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the division that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents. |
| (7) | "Board" means the State Building Board established pursuant to Section 63A-5b-104. |
| (8) | "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products. |
| (9) | "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number. |
| (10) | "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law. |
| (11) | "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred. |
"Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

"Solicitation" in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

"Director" means the Director of the Division, including, unless otherwise stated, the Director’s duly authorized designee.

"Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5b-201.

"Mandatory Requirement" means a condition set out in the specifications statement of work that must be met without exception.

"Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/or offeror an advantage or benefit not shared by other bidders/offerees, or does not adversely impact the interests of the procurement unit.

"New Technology" means any type of information technology, discovery, improvement, or innovation that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not patentable and any new process, machinery, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software as defined in Section 63A-16-901.

"Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

"Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

"Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit. "Performance Bond" means a promise to pay the obligee (the division) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The performance bond protects the obligee (the division) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (the division), will recover its losses via the bond.

"Price Pricing Data" means factual information concerning prices for procurement items.

"Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

"Section and Subsection" refers to the Utah Code.

"Solicitation," in addition to the definition in Section 63G-6a-[103-3] includes all documents, whether attached or incorporated by reference to the solicitation.

"Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation.

This Subsection R23-1-104(3) does not apply to the following:

(a) a design build construction project;

(b) provisions in specifications provided by the designer when the sources of the specification is identified and it is not designed to be an impermissible sole source (a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules); and

(c) other procurements determined in writing by the director.

"Technology" means any type of information technology, discovery, improvement, or innovation that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not patentable and any new process, machinery, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software as defined in Section 63A-16-901.

"Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this Rule R23-1.

R23-1-103. Division is Issuing and Conducting Procurement Unit.

The Division is both the issuing and conducting procurement unit for procurements under this Rule R23-1.

R23-1-104. Specifications.

(1) Solicitation documents shall include specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the division's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the division.

(b) Violations of this Rule R23-1-104(3) may result in:

(i) the solicitation being cancelled;

(ii) termination of an awarded contract; or

(iii) any action determined to be appropriate by the director.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are drafted, may not participate in writing specifications. The division may retain the services of an entity to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However, the entity assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) This Subsection R23-1-104(3) does not apply to the following:

(i) a design build construction project;

(ii) provisions in specifications provided by the designer when the sources of the specification is identified and it is not designed to be an impermissible sole source (a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules); and

(iii) other procurements determined in writing by the director.

(b) Violations of this Rule R23-1-104(3) may result in:

(i) the bidder or offeror being declared ineligible for award of the contract;

(ii) the solicitation being cancelled;

(iii) termination of an awarded contract; or

(iv) any other action determined to be appropriate by the director.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:

(i) "or equivalent" reference is included in the specifications; and

(ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the division shall name at least three manufacturer's specifications.
(5) Brand Name Sole Source Requirements.
   (a) If only one brand can meet the requirement, the division shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and
   (b) If there is only one provider that can meet the requirement, the division shall conduct the procurement in accordance with Section 63G-6a-802.

R23-1-201. Director Appoint to Policy Board, Building Board Rules Authority.
   (1) The Director shall appoint a representative to serve on the Utah State Procurement Policy Board.
   (2) In accordance with Section 63G-6a-204(2), the Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction architect-engineer services, and leases of real property by the Division.

R23-1-301. Relationship with the Division of Purchasing and General Services.
   (1) The Division recognizes the provisions of Part 3 of the Utah Procurement Code regarding the Chief Procurement Officer. The Division may participate as needed or required with trainings provided by the Division of Purchasing and General Services.
   (2) The Director's responsibilities are provided in Title 63a, Chapter 5b of the Utah Code.

R23-1-401. Request for Information.
   In addition to the requirements of Part 4 of the Utah Procurement Code, a Request for Information may indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

   General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-[402]-506 through [408]-507. All definitions in the Utah Procurement Code shall apply to this Rule R23-1-4[4]501 through R23-1-502 unless otherwise specified in Rule 23-1. This Rule R23-1-4[4]501 through R23-1-502 provide[s] additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

   (1) [Public entities] The Division may establish approved vendor lists in accordance with the requirements of Section[.] 63G-6a-[403]-507 and 63G-6a-404.
      (a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:
         (i) Construction Projects: $2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
         (ii) Professional and General Services, including architectural and engineering services: $1,500,000; and
      (b) Thresholds for other approved vendor lists may be established by the Director.

R23-1-403. Specifications.
   (1) Solicitation documents shall include specifications for the procurement item(s).
   (2) Specifications shall be drafted with the objective of clearly describing the Division's requirements and encouraging competition.
      (a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the Division.
      (b) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. The Division may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However, the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
         (i) This Rule R23-1-403(2) does not apply to the following:
            (1) design build construction project;
            (2) provisions in specifications provided by the designer when the source of the specification is identified and it is not designed to be an impermissible sole source (a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules); and
            (3) other procurements determined in writing by the Director.
      (3) Violations of this Rule R23-1-403(2) may result in:
         (i) the bidder or offeror being declared ineligible for award of the contract;
         (ii) the solicitation being canceled;
         (iii) termination of an awarded contract; or
         (iv) any other action determined to be appropriate by the Director.
   (4) Brand Name or Equal Specifications.
      (a) Brand name or equal specifications may be used when:
         (i) "or equivalent" reference is included in the specification; and
         (ii) as many other brand names as practicable are also included in the specification.
      (b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
      (c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the Division shall name at least three manufacturer's specifications.
   (5) Brand Name Sole Source Requirements.
      (a) If only one brand can meet the requirement, the Division shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and
      (b) If there is only one provider that can meet the requirement, the Division shall conduct the procurement in accordance with Section 63G-6a-802.

R23-1-[404]503. Small Purchases (Commodities).
   Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-[408]-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
   (1) "Small Purchase" means a procurement conducted by the Division that does not require the use of a standard procurement process.

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
(2) Small Purchase thresholds for commodities:
   (a) The "Individual Procurement" threshold is a maximum amount of $[1][2][0,000 for a procurement item;
   (b) For individual procurement item(s) costing up to $[2][0,000, the Division shall select the best source by direct award and
   without seeking competitive bids or quotes.
   (a) The single procurement aggregate threshold is a maximum amount of $[8][0,000 for multiple procurement item(s)
   purchased from one source at one time; and
   (b) The annual cumulative threshold from the same source is a maximum amount of $[8][0,000,000.
   (3) Whenever practicable, the Division shall use a rotation system or other system designed to allow for competition when using
   the small purchases process for commodities.

R23-1-[405]504. Small Purchases Threshold for Architectural and
Engineering Services.
   (1) The small purchase threshold for architectural or
   engineering services is a maximum amount of $[1][5][0,000.
   (2) Architectural or engineering services may be procured, up
   to a maximum of $[4][5][0,000, by direct negotiation.
   (3) The Division shall follow the process described in Section
   63G-6a-[402]-[507 to prequalify potential vendors and [Section 63G-6a-
   404] if the Division develops an approved vendor list, or Part 15 of the
   Utah Procurement Code for the selection of architectural and
   engineering services.
   (4) The Division shall include minimum specifications when
   using the small purchase threshold for architectural and engineering services.

R23-1-[406]505. Small Purchases Threshold for Construction
Projects.
   (1) The small construction project threshold is a maximum of
   $[2][5][0,000 for direct construction costs, including design and
   allowable furniture or equipment costs;
   (2) The Division shall follow the process described in the
   Section 63G-6a-[402]-[507 to prequalify potential vendors and [Section 63G-6a-
   404] to develop an Approved Vendor List or other applicable
   selection methods described in the Utah Procurement Code for
   construction services.
   (3) The Division shall include minimum specifications when
   using the small purchases threshold for construction projects.
   (4) The Director may procure small construction projects up
   to a maximum of $[2][5][0,000 by direct award without seeking
   competitive bids or quotes after documenting that all building code
   approvals, licensing requirements, permitting, and other construction
   related requirements are met. The awarded contractor must certify that
   they are capable of meeting the minimum specifications of the project.
   (5) The Director may procure small construction projects
   costing more than $[2][5][0,000 up to a maximum of $[8][5][0,000 by
   obtaining a minimum of two competitive quotes that include minimum
   specifications and shall award to the contractor with the lowest quote
   that meets the specifications after documenting that all applicable
   building code approvals, licensing requirements, permitting and other
   construction related requirements are met.
   (6) The Division shall procure construction projects over
   $[1][5][0,000 using an invitation to bid, request for proposals, approved
   vendor list, or other approved source selection method provided in the
   Utah Procurement Code.

R23-1-[407]506. Quotes for Small Purchases of Commodities from
$1,000 to $50,000.
   The following applies to commodities:
   (1) For procurement item(s) where the cost is greater than
   $1,000 but up to a maximum of $[5][0,000, the Division shall obtain a
   minimum of two competitive quotes, which may be by email, phone or
   verbal, that include minimum specifications and shall purchase the
   procurement item from the responsible vendor offering the lowest quote
   that meets the specifications.
   (2) For procurement item(s) where the cost is greater than
   $[5][0,000 up to a maximum of $[8][0,000, the Division shall obtain a
   minimum of two competitive quotes, which include minimum
   specifications, which must be communicated to the proposed vendors in
   writing[] and shall purchase the procurement item from the responsible
   vendor offering the lowest quote that meets the specifications.
   (3) For procurement item(s) costing over $[8][0,000, the
   Division shall conduct an invitation for bids or other procurement
   process outlined in the Utah Procurement Code.
   (4) The names of the vendors offering quotations and bids
   and the date and amount of each quotation or bid shall be recorded and
   maintained as a governmental record.

R23-1-[408]507. Small Purchases of Services of Professionals,
Providers, and Consultants.
   (1) The small purchase threshold for professional service
   providers and consultants is a maximum amount of $[1][5][0,000.
   (2) After reviewing the qualifications, the Director may
   obtain professional services or consulting services up to a maximum of
   $[1][5][0,000 by direct negotiation.

[R23-1-501. Request for Information.
   In addition to the requirements of Part 5 of the Utah
   Procurement Code, a Request for Information should indicate the
   procedure for business confidentiality claims and other protections
   provided by the Utah Government Records and Access Management Act.

R23-1-601. Competitive Sealed Bidding[; Multiple Stage Bidding;
Reverse Auction].
   Competitive Sealed Bidding shall be conducted in accordance
   with the requirements set forth in Sections 63G-6a-601 through 63G-6a-
   6[12][8]. All definitions in the Utah Procurement Code shall apply to
   this Rule unless otherwise specified in this Rule. This administrative
   rule provides additional requirements and procedures and must be used
   in conjunction with the Utah Procurement Code.

   (1) The invitation for bids shall include the information
   required by Section 63G-6a-603 and shall also include a "Bid Form" or
   forms, which shall provide lines for each of the following:
   (a) the bidder's bid price;
   (b) the bidder's acknowledged receipt of addenda issued by the
   [procurement unit];
   (c) the bidder to identify other applicable submissions; and
   (d) the bidder's signature;
   (2) Bidders may be required to submit descriptive literature
   and/or product samples to assist the Director in evaluating whether a
   procurement item meets the specifications and other requirements set
   forth in the invitation to bid.
(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.


(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

R23-1-603. Pre-Bid Conferences and Site Visits.

(a) A pre-bid conference may be attended via the following:
   (i) attendance in person;
   (ii) teleconference participation;
   (iii) webinar participation;
   (iv) participation through other electronic media approved by the Director.

(b) Mandatory site visits must be attended in person.

(c) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(d) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(f) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(g) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance.

(2) If a pre-bid conference or site visit is held, the Division shall maintain:
   (a) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
   (b) minutes, if there are any, of the pre-bid conference or site visit;
   (c) copies of any documents distributed by the Division to the attendees at the pre-bid conference or site visit; and
   (d) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

(3) The Division shall publish as an Addendum to the solicitation, the information in R23-1-603 (2)(a) above.

R23-1-604. Addenda to Invitation for Bids.

Prior to the submission of bids, [a procurement unit] the Division may issue addenda which may modify any aspect of the [invitation for bids].

(1) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(2) After the due date and time for submitting bids, at the discretion of the Director, addenda to the [invitation for bids] may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the [invitation for bids] that, in the opinion of the Director, likely would have impacted the number of bidders responding to the [invitation for bids].

R23-1-605. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R23-1-605.[4][5]

(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

(3) When submitting a bid or modification to a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.

(4) All bids or modifications to bids received by physical delivery will be date and time stamped by the [procurement unit].

(5) To the extent that an error on the part of the Division results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.


The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the Director.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:
   (i) missing signatures,
   (ii) missing acknowledging receipt of an addendum;
   (iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;
   (iv) typographical errors;
(v) mathematical errors not affecting the total bid price; or
(vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) The Director shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-604(5).

(5) If there is any deficiency or failure to submit a required sublist and/or [“bid”] bond, the Division may request that the bidder who is not in compliance, submit the required sublist and/or [“bid”] bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or [“bid”] bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the bidder ineligible for consideration of award of the contract.

R23-1-607. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the attorney general's office, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the Director.

R23-1-608. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the Director determines that:
(a) A material change in the scope of work or specifications has occurred;
(b) procedures outlined in the Utah Procurement Code were not followed;
(c) additional public notice is desired;
(d) there was a lack of adequate competition; or
(e) other reasons exist that are in the best interests of the Division.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R23-1-609. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an [invitation for bids, including multiple stage bidding] award may be made to the single bidder if the Director determines that the price submitted is fair and reasonable, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
(a) a new invitation for bids solicited;
(b) the procurement canceled; or
(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R23-1-610. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Director may only accept the bidder's primary bid and [will] shall not accept any other bids constituting multiple or alternate bids.

R23-1-611. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of a tie, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, an acceptable method when there are two tie bids shall be for the Director to toss a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being "heads."

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the Director.

R23-1-612. Publication of Award.

(1) The Division shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:
(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and
(b) the names and the prices of each bidder to which the contract is not awarded.

R23-1-613. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609, Utah Procurement Code.

(1) The Director may hold a pre-bid conference as described in Rule R32-6-102 to discuss the multiple stage bidding process or for any other permissible purpose.

R23-1-614. Technology Acquisitions.

(1) The Division in an [invitation for bids, including multiple stage bidding] may state that at any time during the term of a contract, the Division may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the [acquiring] using agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the [acquiring] using agency reserves the right to:
(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;
(b) terminate the contract in accordance with the existing contract terms and conditions; or
(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

R23-1-614(5). Subcontractor Lists.

The Division may not consider, or award to, any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of Section 63A-5b-208(605) and this Rule. For purposes of this Rule R23-1-614(5), the definitions of Section 63A-5b-208(605) shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63A-5b-208(605)(3)(a)(ii) or (iii).
shall be borne by the contractor; and

e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for

(f) the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of state law or rule which may be used to award the construction project.


Request for proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-7121, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.


(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The Division is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the Division with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals and

(f) the requirements of Section 63G-6a-402(6).]

R23-1-703. [Multiple-Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple-stage request for proposals solicitation shall include:

(a) the type of work the subcontractor is to perform;

(b) the subcontractor's name;

(c) the subcontractor's bid amount;

(d) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(e) the impact that the selection of any alternate included in the solicitation would have on the information required by this Rule R23-1-614.

(2) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(3) If pursuant to Subsection 63A-5b-[208]-605(4), a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

(a) comply with the requirements of Section 63A-5b-[208]-605 and

(b) clearly list himself/herself on the subcontractor list form.

(4) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of the bidder's reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this [section]Rule, and, provided that this does not result in an adjustment to the bidder's contract amount.

(5) Pursuant to Sections 63A-5b-[208]-605 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(6) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change the contractor's listed subcontractors only after receiving written permission from the Director based on complying with all of the following:

(a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:

(i) the original subcontractor has failed to perform, or is not qualified or capable of performing

(ii) the subcontractor has requested in writing to be released

(b) Thecircumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-615(6). Bids Over Budget.

(1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the Director may, where time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:

(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontractors by the low responsive and responsible bidder;

(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost, with the value of those reductions validated in accordance with Section R23-1-50; or

(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.

(3) The use of one of the alternative procedures provided for in [this]subsection (2) must provide for the fair and equitable treatment of bidders.

(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contract file.

(5) This Rule does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of state law or rule which may be used to award the construction project.
NOTICES OF PROPOSED RULES


(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(a) Pricing may not be classified as business confidential and will be considered public information.

(i) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY".

(b) One non-redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R23-1-705 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R23-1-706 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

R23-1-707. Pre-Proposal Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(a) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

(b) Mandatory site visits must be attended in person.

(c) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(d) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(f) At the discretion of the [conducting procurement unit]Division, audio or video recordings of pre-proposal conferences and site visits may be used.

NOTICE OF PROPOSED RULES


(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(a) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY".

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R23-1-705 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R23-1-706 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

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(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

(b) Mandatory site visits must be attended in person.

(c) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(d) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(f) At the discretion of the [conducting procurement unit]Division, audio or video recordings of pre-proposal conferences and site visits may be used.


(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(a) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY".

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R23-1-705 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R23-1-706 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

R23-1-707. Pre-Proposal Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(a) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

(b) Mandatory site visits must be attended in person.

(c) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(d) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(e) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(f) At the discretion of the [conducting procurement unit]Division, audio or video recordings of pre-proposal conferences and site visits may be used.
(g) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance.

(2) If a pre-proposal conference or site visit is held, the Division shall maintain:
(a) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee’s contact information;
(b) minutes, if there are any, of the pre-proposal conference or site visit;
(c) copies of any documents distributed by the Division to the attendees at the pre-proposal conference or site visit;
(d) any verbal modification made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

(3) The Division shall publish as an addendum to the solicitation, the information in R23-1-708(2)(a) above.

R23-1-705[9]. Addenda to Request for Proposals.
(1) Addenda to the [R]request for [P]proposals may be made for the purpose of:
(a) making changes to:
   (i) the scope of work;
   (ii) the schedule;
   (iii) the qualification requirements;
   (iv) the criteria;
   (v) the weighting; or
   (vi) other requirements of the Request for Proposal.
(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the deadline for submitting a response to a Request for Proposal, the Division may, at the discretion of the Director, issue a request for proposals addendum[s] only to the offerors that have submitted proposals, if provided the addendum[s] does not make a substantial change in the [R]request for [P]proposals in a way that, in the opinion of the Director, would likely have [impacted] affected the number of proposals submitted in response to the request for proposals had the addendum been included in the request for proposals.

R23-1-706. Modification or Withdrawal of Proposal Prior to Deadline.
[Ap]Proposals may be modified or withdrawn prior to the established due date and time for responding.

(1) Except as provided in R23-1-7-04[7](5) below, proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.

(3) When submitting a proposal or modification to a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.

(4) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the Division.

(5) To the extent that an error on the part of the Division results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Director.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:
   (i) missing signatures,
   (ii) missing acknowledgement of an addendum;
   (iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;
   (iv) typographical errors;
   (v) mathematical errors not affecting the total proposed price; or
   (vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the Attorney General's Office, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

R23-1-710[4]. Correction or Withdrawal of Proposal, Sublist and Bond errors.
(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Director may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-704.6.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory requirements stated in the request for proposals in accordance with Section 63G-6a-703[4].
(3) If there is any deficiency or failure to submit a required sublist and/or ["bid"] bond, the Division may request that the offeror who is not in compliance submit the required sublist and/or ["bid"] bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or ["bid"] bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the offeror ineligible for consideration of award of the contract.

R23-1-711[5]. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the [RFP] request for proposals.
(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting [minimum] requirements specified in the [RFP] request for proposals.
(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.
(4) The Director shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.


Best and Final Offers shall be conducted in accordance with Section 63G-6a-707.5. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.
(a) An evaluation committee may request best and final offers when:
(i) no single proposal addresses all the specifications;
(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
(iii) additional information is needed in order for the evaluation committee to make a decision;
(iv) the differences between proposals in one or more categories are too slight to distinguish;
(v) all cost proposals are too high or over the budget;
(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under a [RFP] request for proposals and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.
(2) Only offerors meeting the [minimum] qualifications or scores described in the [RFP] request for proposals are eligible to respond to best and final offers.
(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the [RFP] request for proposals described in the request for best and final offers.
(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the Division.
(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.
(b) The Division shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the [RFP] request for proposals process.
(6) The Division may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.
(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
(8) A request for best and final offers issued by the Division shall:
(a) comply with all public notice requirements provided in Section 63G-6a-112[406];
(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;
(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;
(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;
(10) Unsolicited best and final offers will not be accepted from offerors.

R23-1-713[7]. Cost-Benefit Analysis Exception: CM/GC.

(1) An evaluation committee [cost-benefit analysis] is not required to explain how a recommended proposal provides the best value to the Division under Section 63G-6a-707 if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-707[8] provided:
(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
(i) a management plan;
(ii) references;
(iii) statements of qualifications; and
(iv) a management fee only if requested by the Division. The management fee may not be requested by the Division if the management fee is not part of the criteria for the evaluation committee.
The Division may use a fee table for this management fee.
(b) the management fee contains only the following:
(i) preconstruction phase services;
(ii) monthly supervision fees for the construction phase; and
(iii) overhead and profit for the construction phase.
(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
(d) the contract awarded must be in the best interest of the Division.

R23-1-714[8]. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee may:
(a) conduct a review to determine if:
(i) the proposal meets the [minimum] requirements;
(ii) pricing and terms are reasonable; and
(iii) the proposal is in the best interest of the Division [procurement unit].
(b) if the evaluation committee determines the proposal meets the [minimum] requirements, pricing and terms are reasonable, and the proposal is in the best interest of the Division [procurement unit], the Division [procurement unit] may make an award.
(c) If an award is not made, the Division [procurement unit] may either cancel the procurement or re-solicit for the purpose of obtaining additional proposals.

(1) In addition to the requirements of Section 63G-6a-112[706.5], the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R23-1-703[8];
(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R23-1-703[8];
(c) the rankings of the proposals;
(d) the names of the members of any selection committee (reviewing authority);
(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings;
(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R23-1-703[8].
(2) After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:
(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;
(b) any individual scorer's/evaluator's notes, drafts, and working documents;
(c) non-public financial statements; and
(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

R23-1-801. Sole Source - Award of Contract Without Competition.
(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802[7, Utah Procurement Code]. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Utah Procurement Code.
(2) A sole source procurement may be conducted if:
(a) there is only one source for the procurement item;
(b) the award to a specific supplier, service provider, or contractor is in accordance with the requirements imposed by the source of the funds used to procure the procurement item; a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or
(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.
(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.
(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the Director for approval.
(5) The sole source request shall be submitted to the Director and shall include:
(a) a description of the procurement item;
(b) the total dollar value of the procurement item including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;
(c) the duration of the proposed sole source contract;
(d) an authorized signature of the requester;
(e) unless the sole source procurement is conducted under Rule R23-1-801(2)(b) or (c), research completed by the requestor documenting that there are no other competing sources for the procurement item;
(f) any other information requested by the Director; and
(6) a sole source request form containing all of the requirements of Rule R23-1-801(5) may be available on the [Division's] website and may be described in specifications or other contract documents.
(7) Except as provided in subsection (b), sole source procurements over $50,000 shall be published in accordance with Section 63G-6a-112[406].
(a) Sole source procurements under $50,000 are not required to be published but may be published at the discretion of the Director.
(b) The requirement for publication of notice for a sole source procurement is waived:
(i) for public utility services;
(ii) if the award to a specific supplier, service provider, or contractor is in accordance with the requirements imposed by the source of the funds used to procure the procurement item; a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or
(iii) when the circumstances of the request are clear that there can only be one source; or
(iv) as provided in Rule R23-1-805; or
(v) for other circumstances as determined in writing by the Director.
(8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-112[406], when public notice is required under this Rule R23-1-801 by submitting the following information in writing to the Director:
(a) the name of the contesting person; and
(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.
(9) Upon receipt of information contesting a sole source procurement, the Director shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

R23-1-802. Trial Use or Testing of a Procurement Item, Including New Technology.
The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802[7, Utah Procurement Code].
(1) The Director may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Director, to be more practicable or advantageous to the [procurement unit]Division:
(a) used vehicles;
(b) livestock;
(c) hotel conference facilities and services;
(d) speaker honorariums;
(e) hosting out-of-state and international dignitaries;
(f) international promotion of the state; and
(g) any other procurement item for which a standard procurement method is not reasonably practicable.
(2) When making this determination, the Director may take into consideration whether:
(a) the potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;
(b) the procurement item cannot be acquired through a standard procurement process; and
(c) the price of the procurement item is fair and reasonable.
(3) In the event that it is so determined, the Director may elect to utilize an alternative procurement method which may include any or all of the following:
(a) informal price quotations;
(b) direct negotiations; and
(c) direct award.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.
(2) An emergency procurement is a procurement procedure where the [procurement unit]Division is authorized to obtain a procurement item without using a standard competitive procurement process.
(3) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.
(4) While a standard procurement process is not required under an emergency procurement, when practicable, the Division should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.
(5) The Division shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made part of the [procurement]contract file and shall be available for public inspection and the Division [shall]may:
(a) re-solicit new bids or proposals using the same or revised specifications; or,
(b) withdraw the [requisition]solicitation for the procurement item(s).

R23-1-902. Re-solicitation.
(1) In the event there is no initial response to an initial solicitation, the Director may:
(a) contact the known supplier community to determine why there were no responses to the solicitation;
(b) research the potential vendor community; and,
(c) based upon the information in (a) and (b) require the Division to modify the solicitation documents.
(2) If the Division has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Director, [shall]may:
(a) require the Division to further modify the procurement documents; or,
(b) cancel the [requisition]solicitation for the procurement item(s).

R23-1-903. Cancellation Before Award.
(1) Solicitations may be cancelled before award but after opening all bids or offers when the Director determines in writing that:
(a) inadequate or ambiguous specifications were cited in the solicitation;
(b) the specifications in the solicitation have been or must be revised;
(c) the procurement item(s) being solicited are no longer required;
(d) the solicitation did not provide for consideration of all factors of cost to the [procurement unit]Division and/or using agency, such as cost of transportation, warranties, service and/or maintenance;
R23-1-904. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors [should] may be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R23-1-905. Continuation of Need.

If the solicitation has been cancelled for the reasons specified in Rule R23-1-903 (1)(f), (g) or (h) and the Director has made the written determination in Rule R23-1-903(1) and the Division has an existing contract, the Division may permit an extension of the existing contract under Section 63G-6a-802.[(74)7] R23-1-906. Rejections and Suspension/Debarment.

(1) The Division may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the Division. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the contract file and shall be available for public inspection.

(2) Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

R23-1-907. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the Director shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42)74.

(2) In accordance with Section 63G-6a-60[46(3)]75 the Director may not accept a bid that is not responsive. Responsive[ness] is defined in Section 63G-6a-103[42]75.

(3) If there is any deficiency or failure to submit a required sublist and/or bid bond, the Division may request that the bidder/offeror who is not in compliance, submit the required sublist and/or bid bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or bid bond by 5:00 p.m. of the next business day after notice is provided by the Division, shall make the bidder/offeror nonresponsive and therefore ineligible for consideration of award of the contract.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the contract file and available for public inspection.

R23-1-908. Debarment or Suspension From Consideration for Award of Contracts -- Process -- Causes for Debarment -- Appeal.

The procedures for a debarment or suspension from consideration for award of contracts, including appellate rights, are provided in Section 63G-6a-904. Upon any suspension or debarment, the person that is suspended or debarred shall be considered nonresponsible and ineligible for the award of contracts by the Division in accordance with the determination of suspension or debarment.


(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R23-1-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

(2) In the event there is more than one equally low preferred bidder, the Director shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R23-1-[40]611.

R23-1-1002. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the Director shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and this Rule R23-1-[40]611.


This Rule R23-1-10 does not apply to the extent it [may jeopardize the receipt of federal funds] conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

R23-1-1101. Definitions.

(1) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(2) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.


(1) Application. The requirements for bid security and bonds under this Rule R23-1-11 shall apply as follows:

(a) [ ]for the Division, the award of construction contracts where the face amount of the contract is $100,000 or more.

(b) For other state agencies that are required to use the same or similar documents as the Division for their construction contracts, the award of construction contracts where the face amount of the contract is
Rule R23-1-1102 shall also be deemed to apply to “offer.”

**UTAH STATE BULLETIN**

excess of $50,000. These bonds shall cover the procuring amount of 100% of the contract price are required for all contracts in this Rule R23-1-1102(1) above, payment and performance bonds in the deemed nonsubstantial if:

- The Director finds that the agency has a selection process for such contracts that are under $100,000, that ensures a responsible, financially solvent contractor is selected; and
- that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security and bonding requirements for the contract under $100,000.

- At any time the Division or any other state agency can require acceptable bid security as well as performance and payment bonds on contracts that are for amounts below the standard requirements set forth above in this Rule.

2. Acceptable Bid Security. The term “bid” as used in this Rule R23-1-1102 shall also be deemed to apply to “offer.”

   a. Invitations for [R]bids and [R]requests [F]for proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

b. If acceptable bid security is not furnished in accordance with Rule R23-1-907(3), the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

   i. the bid security is submitted on a form other than the Division’s required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Section 217-9-107(5);

   ii. the contractor provides acceptable bid security by 5 p.m. of the next business day after notice is provided by the Division of the defective bid security; or

   iii. only one bid is received.

3. Payment and Performance Bonds. Except as provided in this Rule R23-1-1102(1), payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of $50,000. These bonds shall cover the procuring agency[Division and be delivered by the contractor to the Division at the time the contract is executed. If a contractor fails to deliver the required bonds, the contractor’s bid shall be found nonresponsive and its bid security shall be forfeited.

4. Forms of Bonds. [R]Bid [R]bonds, [R]payment [R]bonds and [P]performance [B]bonds must be from sureties meeting the requirements of Rule R23-1-1102(5) and must be on the exact form most recently adopted by the Board and on file with the Division.

   a. for a bid bond, the most current version of American Institute of Architects Document A310 Bid Bond, or equivalent; and

   b. for a performance bond and/or payment bond, the most current version of American Institute of Architects form A312 Performance and Payment Bond, or equivalent.

5. Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable [Securities]Sureties on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

6. Waiver. The Director may waive any bonding requirements set forth in this Rule if the Director finds circumstances in which the Director considers any or all of the bonds to be unnecessary to protect the [Procurement unit]Division. Any such waiver shall be stated in writing, explain the circumstances why the bond(s) is not necessary to protect the [Procurement unit]Division, and the waiver shall be made part of the project file.

(7) The Director may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in this Rule R23-1-1102.

**R23-1-1201. Required Contract Clauses.**

1. The Division shall comply with Section[s] 63G-6a-1202 [considering] in establishing standard contract clauses [for contracts].

2. The Division shall also comply with the requirements of Section 63G-6a-102(6) by requiring that for each contract and request for proposals, the inclusion of a clause that requires the Division, for the duration of the contract, to make available contract information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

3. There shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

4. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

**R23-1-1202. Establishment of Terms and Conditions.**

The Division may use the Standard Terms and Conditions adopted by the Division of Purchasing and General Services for a particular procurement with modifications.

**R23-1-1203. Contracts and Change Orders — Contract Types.**

The Division may use contract types to the extent authorized under Section 63G-6a-1205.

**R23-1-1204. Prepayments.**

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

**R23-1-1205. Leases of Personal Property.**

Leases of personal property are subject to the following:

1. Leases are subject to [shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209 and all other provisions of law or rule applicable to the lease.

2. A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

   a. if it is in the best interest of the procurement unit;

   b. all conditions for renewal and costs of termination are set forth in the lease; and

   c. the lease is not used to avoid a competitive procurement.

3. Lease contracts shall be conducted with as much competition as practicable.

4. Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the Division shall: 

(a) investigate alternative means of procuring comparable procurement items; and
(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

[R23-1-1206. Multi-Year Contracts.]

The Division may issue multi-year contracts in accordance with Section 63G-6a-1204. Section 63G-6a-1204 does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

[R23-1-1207. Installment Payments.]

Procurement units may make installment payments in accordance with Section 63G-6a-1208.

[R23-1-1208. Change Orders.]

The Division shall comply with Section 63G-6a-1207.

[R23-1-1204(9). Requirements for Cost or Pricing Data.]

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
(2) Cost or pricing data exceptions:
(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the Director may request additional cost or pricing data; or
(c) the Director may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

[R23-1-1204(10). Defective Cost or Pricing Data.]

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the Division may enter into discussions to negotiate a settlement.
(2) If a settlement cannot be negotiated, either party may seek relief as provided by applicable laws and rules.

[R23-1-1206(14). Cost Analysis.]

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
(a) specific elements of costs;
(b) total cost of ownership and life-cycle cost;
(c) supplemental cost schedules;
(d) market basket cost of similar items;
(e) the necessity for certain costs;
(f) the reasonableness of allowances for contingencies;
(g) the basis used for allocation of indirect costs; and,
(h) the reasonableness of the total cost or price.

[R23-1-1212. Audit.]

The Division may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

[R23-1-1213. Retention of Books and Records.]

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

[R23-1-1207[14]. Inspections.]

Circumstances under which the Division may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed for the purpose of determining:
(1) whether the definition of "responsible," as defined in Section 63G-6a-103([40]74) and in the solicitation documents, has been met or are capable of being met; and
(2) if the contract is being performed in accordance with its terms.


(1) The Division may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:
(a) inspect procurement items for acceptance by the Division pursuant to the terms of a contract;
(b) audit cost or pricing data pursuant to Section 63G-6a-1206 and/or audit the books and records of any contractor or subcontractor pursuant to Utah Code Section 63G-6a-1206.3 or Administrative Rule; and
(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

[R23-1-1209[16]. Inspection of Supplies and Services.

Contracts may provide that the Director or Division may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

[R23-1-1210[7]. Conduct of Inspections.

(1) No inspector may change any provision of the specifications or the contract without written authorization of the Director. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirements of the contract.
(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

[R23-1-1301. Purpose.]

The purpose of this rule is to comply with the provisions of Section[s] 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts;

(2) documenting the selection of a particular method of construction contract management; and

(3) the selection of a construction manager/general contractor.


The provisions of Rules R23-1-1302 through R23-1-1308 shall apply to all procurements of construction.


(1) This Rule contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the Director have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the Division. The methods for achieving the purposes set forth in this Rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the Director of the requirements the project. The Director shall consider, at a minimum, the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the Division and the way in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance money, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of the Division's personnel to be assigned to the project and how much time the Division's personnel can devote to the project;

(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;

(i) the results achieved on similar projects in the past and the methods used; and

(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the Division. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the Division to timely complete an entire construction project in accordance with drawings and specifications provided by the Division. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the Division. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the Division to meet the Division's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(c) Construction Manager/General Contractor (Construction Manager at Risk). The Division may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R23-1-1305. Selection of Construction Method Documentation.

The Director shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R23-1-1306. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 [of the Utah Procurement Code] or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.


(1) The Division is authorized to use a design-build provider as one method of construction contracting management.

(2) A design-build contract may include a provision for obtaining the site for the construction project.

(3) A design-build contractor may include provision by the contractor of operations, maintenance, or financing.


The rules applicable to the Division for drug and alcohol testing are in Rule 23-7 of the Utah Administrative Code.

The [Board recognizes that the] Utah Department of Transportation is the rulemaking authority for rules under Section 63G-6a-1402(3)(a)(ii) governing the procurement of design-build transportation projects and under Section 63G-6a-1403(2)(c) establishing requirements for the procurement of tollway development agreements.

R23-1-1501. Architect-Engineer Evaluation Committee. The Director shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-[207]1503.

(3) Request for Statement of Qualifications. The Division shall issue a public notice for a request for statement of qualifications to rank architects or engineers. The Division shall:

(i) state in the request for statement of qualifications:

(A) basic information about the person or firm;
(B) experience and work history;
(C) management and staff;
(D) qualifications and certification;
(E) licenses and certifications;
(F) applicable performance ratings;
(G) financial statements; and
(H) other pertinent information.

(ii) the type of procurement item to which the request for statement of qualifications relates;

(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

(iv) criteria used to evaluate statements of qualifications including:

(A) basic information about the person or firm;
(B) experience and work history;
(C) management and staff;
(D) qualifications and certification;
(E) licenses and certifications;
(F) applicable performance ratings;
(G) financial statements; and
(H) other pertinent information.

(b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the Division.

(4) Not include Cost in Response. Architects and engineers shall not include price or a cost component in a response to a request for statement of qualifications.

(5) Evaluation of Statement of Qualifications. The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-[207]1503.5 to rank (score) architects or engineers without considering price or a cost component.

(6) Negotiation and Award of Contract. The Director shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable based on the Division's rate table or as may be reasonably adjusted by the Director for the particular scope of work, location or other aspects of the services.

(7) Failure to Negotiate Contract With the Highest Ranked Firm.

(a) If fair and reasonable compensation, contract requirements, and/or contract documents cannot be agreed upon with the highest ranked firm, the Director shall advise the firm in writing of the termination of negotiations.

(b) Upon failure to negotiate a contract with the highest ranked firm, the Director shall proceed in accordance with Section 63G-6a-1505[ of the Utah Procurement Code].

(8) Notice of Award.

(a) The Director shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(b) Notice of the award shall be made available to the public.

(89) Written Justification Statements. The Division shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.


(1) Except as provided in this [Rule], submittals shall be open to public inspection after notice of the selection results.

(2) The classification of records as protected and the treatment of such records shall be as provided in Rule R23-1-703[5].

(3) The [Board]Division finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of [Subs]Section 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.


(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in [Salt Lake City] Taylorsville, Utah and may be available on the Internet.

(2) Information Disclosed. The following shall be disclosed with the notice of selection:

(a) the ranking of the firms;
(b) the names of the selection committee members;
(c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
(d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the [Board]Division to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

(a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
(b) non-public financial statements, subject to Section 63G-2-309 and R23-1-703.

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division’s evaluation.
(2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.
(3) Confidentiality of the evaluation information shall be addressed as provided in Subsections R23-1-1502 and R23-1-1503.

[Controversy and -]Protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-603[4]. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1602. Verification of Legal Authority.
A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, proprietorship, partnership, or unincorporated association.

R23-1-1603. Intervention in a Protest.
(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.
(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The Division or entities who conducted the procurement and using agency those who are the intended beneficiaries of the procurement shall be considered a Party of Record and need not file any Motion to Intervene.
(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall be mailed or emailed to the person protesting the procurement.
(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person’s interest in sufficient factual detail to demonstrate that:
(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by [Commission] rule, order, or other [action] authority;
(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:
(i) consumer;
(ii) customer;
(iii) competitor;
(iv) security holder of a party; or
(v) the person’s participation is in the public interest.
(5) Granting of Status. If no written objection to the timely Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.
(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R23-1-1701. Statutory and Rule Requirements.
Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Section 63G-6a-1701 through 63G-6a-1705[6, Utah Procurement Code]. Utah Administrative Code Rules R33-17-101 through R33-17-105 shall also apply.

(1) A person who receives an adverse decision, or [a procurement unit [the Division][a public or private corporation, governmental entity][limited liability company, sole proprietorship, partnership, or unincorporated association]
(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1802[4 through 63G-6a-1803].
(3) The Division may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

R23-1-1901. Encouraged to Obtain Legal Advice From Legal Counsel.
(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.
(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1802[4 through 63G-6a-1911] contain provisions regarding:
(a) limitations on challenges of:
(i) a procurement;
(ii) a procurement process;
(iii) the award of a contract relating to a procurement;
(iv) a debarment; or
(v) a suspension; and
(b) the effect of a timely protest or appeal;
(c) the costs to or against a protester;
(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;
(e) the effect of a violation found after award of a contract;
(f) the effect of a violation found prior to the award of a contract;
(g) interest rates; and
(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.
(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R23-1-12].

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105 and the Utah Administrative Code. Rule R23-1-2101. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-2102. State Cooperative Contracts.

(1) The Division shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-408(5)(b)(ii), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(2) In accordance with Section 63G-6a-2105, the Division, public entities, nonprofits, organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R23-1-2201. Reserved.

Part 22 of Title 63G, Chapter 6a, [the] Utah Procurement Code, [does] did not exist at the [relative] point in time that this Rule was amended. [Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code.] At such time as [When] Part 22 of the Utah Procurement Code contains statutory language, the [Board] Division will [consider whether to prepare] propose corresponding rules, as appropriate, pursuant to the Utah Administrative Rulemaking Act[draft rules for the rulemaking process].

R23-1-2301. Reserved.

Part 23 of Title 63G, Chapter 6a, [the] Utah Procurement Code, did not exist at the point in time that this Rule was amended. [Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code.] At such time as [When] Part 23 of the Utah Procurement Code contains statutory language, the [Board] Division will propose corresponding rules, as appropriate, pursuant to the Utah Administrative Rulemaking Act[consider whether to prepare draft rules for the rulemaking process].

R23-1-2401. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 63G-6a-2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-2402. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) A Division employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."

(b) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act."

(d) Section 76-8-105, "Receiving or soliciting a Bribe by a Public Servant." and [Offering a] Bribery by a Public Servant; and

(e) any other applicable law.

R23-1-2403. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) A Division employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/002/2014[0] issued by the Governor (http://www.rules.utah.gov/execdocs/2014[0]/ExecDoc155325[49415].htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-105[3], "Receiving or soliciting a Bribe by a Public Servant;" and

(e) any other applicable law.


(1) A Division procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the Division procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the Division procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the Division procurement professional's independence, integrity, or impartiality.

(2) If an executive branch Division procurement professional participates in a social activity prohibited under R23-1-2404(1), or has a close personal relationship with a vendor or contractor, the Division procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the Division procurement professional from the procurement or contract administration process that is affected.

R23-1-2405. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch Division employee's personal financial interests, or for the personal financial interests of a Division employee's family member, to influence, or have the appearance of influencing, the Division employee's judgment in the execution of the Division employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the Division[s State's] procurement process, an executive branch Division employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the Division employee or a family member of the Division employee; or

(b) relating to any entity in which the Division employee or a family member of the Division employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to [the] a Division employee or a family member of [the] Division employee, the Division employee must advise [his or her] the Division employee's supervisor of the relationship, and must be excused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The Division employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.
R23-1-2406. | Bias Participation Prohibitions.

(1) Division employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have a bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has an impermissible bias under Rule R23-1-2406(1) above regarding an individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R23-1-2407. | Professional Relationships and Social Acquaintances
Not Prohibited.

(1) It is not a violation for an executive branch Division employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Rule R33-24-107(5) R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002-2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

KEY: contracts, procurement, public buildings
Date of Last Change: 2021[March 3, 2015]
Notice of Continuation: February 1, 2017
Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63G-2-101 et seq.; 63G-6-208(2)

<table>
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<tr>
<td><strong>TYPE OF RULE:</strong> Amendment</td>
</tr>
<tr>
<td><strong>Utah Admin. Code Ref (R no.):</strong> R27-4</td>
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<td><strong>Filing ID:</strong> 53959</td>
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Agency Information

1. **Department:** Government Operations
2. **Agency:** Fleet Operations
3. **Building:** Taylorsville State Office Building
4. **Street address:** 4315 S 2700 W FL 3
5. **City, state and zip:** Taylorsville, UT 84128-2128
6. **Mailing address:** PO Box 141117
7. **City, state and zip:** Salt Lake City, UT 84114-1117

<table>
<thead>
<tr>
<th>Contact person(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name:</strong> Cory Weeks</td>
</tr>
<tr>
<td><strong>Phone:</strong> 801-957-7261</td>
</tr>
<tr>
<td><strong>Email:</strong> <a href="mailto:coryweeks@utah.gov">coryweeks@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:**
R27-4. Vehicle Replacement and Expansion of State Fleet

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

The Division of Fleet Operations (DFO) needs to complete a five-year review of its administrative rules. There were amendments proposed after the review process was completed. This amendment also addresses drafting and formatting elements as outlined by 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 amendment makes technical changes to make the administrative rule comply with the current version of the Rulewriting Manual for Utah.

Fiscal Information

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

A) **State budget:**

This rule will have an indirect impact to state budgets. Processes required in this rule require DFO to replace vehicles. Keeping newer more efficient vehicles in the fleet will have costs to state agencies; however, those costs will have countering savings due to decreased repair costs and increased employee productivity, meaning the employee will be able to do necessary field work rather than wait for a car. Both costs and savings are inestimable; however, it is assumed there will be a net savings.

B) **Local governments:**

This rule does not impact local governments.

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

This rule will result in fewer and less expensive repair shop trips for state vehicles, impacting state-contracted mechanic shops. Amounts are indeterminable.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This rule will result in more sales to contracted car dealerships and manufacturers. During fiscal year 2022, Fleet Operations will buy roughly $11,000,000 worth of vehicles. Those purchases will increase to $17,000,000 for fiscal years 2023 and 2024.

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 have an impact on other persons.

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

State government agencies will have compliance costs associated with maintaining their fleet.

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

This rule will have a negative impact on small businesses and a positive impact on non-small businesses. The impacts are associated with proper care of a fleet and are justified. Jenney Rees, 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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<td>Small Businesses</td>
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<tr>
<td>Total Fiscal Benefits</td>
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<td>$0</td>
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</table>

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, 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 63A-9-401(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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: | Cory Weeks, Director |
| Date: | 09/15/2021 |

R27-4-1. Authority and Purpose.

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi), 63A-9-401(1)(d)(xii), 63A-9-401(1)(d)(xiii), 63A-9-401(1)(d)(xiv), and 63A-9-401(6), which require the division to coordinate all purchases of state vehicles, make rules establishing requirements for the procurement of state vehicles, whether for the
replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles; and make rules establishing replacement rates for state vehicles established pursuant to Subsection 63A-9-401(5).

(2) All agencies exempted from the division's replacement program shall provide the division with a complete list of intended state vehicle purchases prior to placing the order with the vendor.

(3) The division shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates are met.

(4) The division shall assist agencies, including agencies exempted from the division's replacement program, in their efforts to ensure that all vehicles in the possession, control, and ownership of agencies are entered into the fleet information system.

(5) Pursuant to Subsections 63J-1-306(8)(i)(ii),(iii), and (iv), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to the division and, when transferred, become part of the Fleet Internal Service Fund.


(1) Prior to purchasing replacement and legislatively approved expansion vehicles for each fiscal year, the division shall, on the basis of input from user agencies, recommend to the division:

(a) a standard state fleet vehicle (SSFV); and

(b) a standard replacement vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) The division shall, after reviewing the recommendations made by the agencies' staff, determine and establish, for each fiscal year:

(a) an SSFV; and

(b) a standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet.

(3) The division shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet of each state vehicle.

(4) The division shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement. The division shall establish replacement cycles for state vehicles. The replacement cycles shall be based on vehicle time in service. Factors including a vehicle's intended use, agreements with an agency, and the intended miles per year may be used in determining the appropriate time in service. Vehicles may be replaced subject to negotiations with the agency, regardless of whether the time in service criterion is met.

R27-4-3. Delegation of Division Duties.

(1) [Pursuant to the provisions of Section 63A-9-401(7), the director of the division, with the approval of the executive director of the [Department of Government Operations], the division may delegate [state vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) [the funding for the procurement of state vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;]

(b) [Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program, are designated "do not replace," and state vehicles acquired with funding from sources other than state appropriations or acquired through the federal surplus property donation program may be transferred to the division and, when transferred, become part of the division's Internal Service Fund; and]

(c) [In the event that the institution of higher education is unable to comply with (b), the institution warrants that it shall not use state appropriations to procure replacements without legislative approval.]

(2) Agreements made pursuant to Section 63A-9-401(7) between the division and the institution of higher education shall, at a minimum, contain:

(a) a precise definition of each delegated duty or function being delegated;]

(b) a clear description of the standards to be met in performing each delegated duty or function being delegated;]

(c) a provision for periodic administrative audits by either the division or the Department of Government Operations;]

(d) a representation by the institution of higher education that the procurement or disposal of state vehicles that are the subject matter of the agreement shall be coordinated with the division. The institution of higher education shall, at the request of the division, provide the division with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to ensure state compliance with federal United States Department of Energy Alternative Fuel Vehicle (AFV) mandates;]

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with;]

(f) a representation that the agreement is subject to the provisions of Section 63J-1-306(63J-1-410, Internal Service Funds - Governance and Review;]

(g) a representation by the institution of higher education that it shall enter into the division's fleet information system all information that would be otherwise required for state vehicles owned, leased, operated or in the possession of the institution of higher education;]

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures regarding related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and]

(1) All state [fleet motor] vehicles shall, subject to budgetary constraints, be replaced in accordance with the established replacement cycle for that vehicle, unless the division and the leasing agency agree to other terms when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase [purchasing] of replacement [motor] vehicles, the division shall provide each agency contact with a list identifying any underutilized vehicles within their fleet, all vehicles that are due for replacement, and the [Standard State Fleet Vehicle (SSFV)] that will be purchased to take the place of each vehicle that is on the list due for replacement.

(3) All vehicles replacements will default to a SSEV.

(a) Agencies may request a non-SSFV [as long as only if one or more of the following justifications are cited]:

   (a) [P] passenger space;
   (b) [T] type of items carried;
   (c) [H] hauling or towing capacity;
   (d) [P] police pursuit capacity;
   (e) [O] off-road capacity;
   (f) 4x4 capacity;
   (g) [E] emergency service [ (police, fire, rescue services) capacity];
   (h) [A] attached equipment capacity [ (snow plows, winches, etc.)]; or
   (i) [O] other justifications as approved by the division director [of the division] or [the director’s] designee.

   (4) [5] Agencies may petition the executive director of the [Department of Government Operations] department, or the executive director's designee, for a review in the event that if the division director [of the division] or [the director’s] designee denies a request for the replacement of a non-SSFV state vehicle with a non-SSFV.

   (5) [6] Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced with vehicles with a history of excessive repairs. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the division director [of the division] or their [director’s] designee.

   (6) [7] Agencies may petition the department's executive director [of the Department of Government Operations], or the executive director's designee, for a review in the event that if the [director of the division] or their [director’s] designee denies a request for the replacement of motor state vehicles with a history of excessive repairs.

R27-4.5. Fleet Expansion.

(1) Any expansion of the state [motor vehicle] fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion, or requesting that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before the division is authorized to purchase the expansion vehicle.

Agencies shall provide proof to the division of the requisite legislative approval and funding for any requests to purchase a vehicle which will expand the state fleet, or for any requests to place "do not replace" vehicles on a replacement cycle.

(3) For the purposes of this rule, a] An agency shall be deemed to have the requisite legislative approval for purchasing expansion vehicles or for placing "do not replace" vehicles on a replacement cycle [under the following circumstances]: only if these actions are:

   (a) [The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Division of Transportation.]
   (b) [Attached equipment capacity [ (snow plows, winches, etc.)]; or
   (c) [Other justifications as approved by the Division of Transportation.]

   (4) [3] For the purposes of this rule, only if the following criteria are met:

   (a) [A letter, signed by the agency’s chief financial officer, written communication with the agency confirming the request for expansion and indicating the specific line item in the appropriations bill providing said authorization.]
   (b) [Written verification from the agency requesting expansion for the purposes of this rule and indicating the specific line item in the appropriations bill providing said authorization.]
   (c) [A motion passed by the executive appropriations committee indicating approval for vehicle expansion.]

   (5) [4] Prior to the [purchase of purchasing] an expansion [motor] vehicle, the division shall provide each agency contact with the [Standard State Fleet Vehicle (SSFV)] that will be purchased.

   (6) All expansion vehicles will default to a SSEV.

(a) Agencies may request a non-SSFV [as long as only if one or more of the following justifications are cited]:

   (a) [P] passenger space;
of Energy alternative fuel vehicle ([federal AFV]{}) mandates. The division may require that a certain number of expansion vehicles, regardless of the requesting agency, be [alternative fuel vehicles] to ensure compliance with [said AFV] mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional vehicle features or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by the division, that results in an increase in vehicle cost shall be deemed a vehicle feature and miscellaneous equipment upgrade. Any additional vehicle features or miscellaneous equipment added to SSFVs which increase the overall cost of the vehicle shall be deemed vehicle feature and miscellaneous equipment upgrades. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) [that a replacement vehicle contains] have a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks;

(b) [the installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that lights or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for vehicle feature and/or miscellaneous equipment upgrades shall be made in writing and, shall:

(a) [present reasons why the upgrades are necessary] to meet the agency's needs;

(b) [be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the division director of the division or their [director's] designee. [Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the division director or the director's designee. The requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs. The division director or their designee shall approve any vehicle feature or miscellaneous equipment upgrades upon determining that they are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the executive director of the Department of Government Operations department, or the executive director's designee, for a review in the event that the director of the division or the division director or their [director's] designee denies a request for a [feature and/or] miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to the director of the division, a fee for the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with the director of the division for payment to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt. The division director, the agency may agree to pay the fee in installments, provided the installment agreement does not delay the payment of the general debt.
R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The division director[ of the division], with the approval of the executive director of the [Department of Government Operations] department, may enter into a Memorandum[ Memoranda] of Understanding allowing [customer—]agencies to install miscellaneous equipment on [in—]state vehicles if:
   (a) the agency [or institution] has the necessary resources and skills to perform the installations; and
   (b) the agency [or institution] has received approval for [said] installing miscellaneous equipment as required by Subsection R27-4-8(2).

(2) Each [in] Memorandum of [a] Understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following provisions:
   (a) [a provision that] monthly lease fees shall be charged to the agency from the date [of] the agency's receipt of the replacement vehicle as required under R27-4-9(7); the state vehicle;
   (b) [a provision that said] the agency shall indemnify and hold the division harmless for any claims made by a third party that are related to the installation of miscellaneous equipment [in or] on state vehicles while the vehicle is in the agency's possession and[ or] control;
   (c) [a provision that said] the agency shall indemnify the division for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and
   (d) [a provision that agencies with permission to install miscellaneous equipment] the agency shall enter into the division's fleet information system the following information regarding the miscellaneous equipment into the division's fleet information system[ presented for installation in or on state vehicles], regardless of whether the item is held in inventory, currently installed on a vehicle, or sent to surplus:
      (1) item description or nomenclature;
      (2) manufacturer of item;
      (3) item identification information for ordering purposes;
      (4) procurement source;
      (5) date item was sent to surplus; and
      (6) actual replacement date of item;
   (e) a provision requiring the agency [or institution with permission to install miscellaneous equipment] to obtain insurance from the Division of Risk Management in amounts sufficient to protect the agency from damage to, or loss of, miscellaneous equipment installed on state vehicles.

(3) Agencies [with] permission to install miscellaneous equipment [shall indemnify the division] hold the division harmless for any damage to, or loss of, miscellaneous equipment installed [in] on state vehicles[.]

(4) Agencies having approval for the installation of miscellaneous equipment [shall agree to indemnify the division] for any damage to, or loss of, miscellaneous equipment installed [in] on state vehicles[.]


(1) [For the purposes of this rule, (a)] Requests for vehicles other than the SSFV established by the division that result in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. [For example, (a)] A vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:
   (a) [the requested replacement vehicle requested by the agency], although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by the division for that class; or
   (b) [the agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2-ton truck replaced with a standard 3/4-ton truck, or to have a compact sedan be replaced with a mid-size sedan.]

(2) Requests for vehicle class differential upgrades shall be made in writing and shall:
   (a) [Represent reasons why the upgrades are necessary in order to meet the agency's needs; and]
   (b) [be signed by the requesting agency's director or the appropriate budget or accounting officer.]

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the division director [of the division] for [the director's] their designee. Vehicle class differential upgrades shall be approved only when:
   (a) [in the judgment of the director of the division or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate; the division director or their designee deems that the planned replacement vehicle is clearly inadequate or inappropriate for meeting the demands of changing operational needs; and]
   (b) [in the judgment of the director of the division or the director's designee, the division director or their designee deems that the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or other special needs for drivers or passengers.]

(4) Agencies may petition the executive director of the [Department of Government Operations] department, or the executive director's designee, for a review [in the event that] if the division director [of the division] for [their] director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrades at the end of the applicable replacement cycle
shall pay to the division, in full, prior to the purchase of the vehicle; a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrades prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to the division, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle, plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.


(1) State vehicles shall be assessed rates [a lease fee designed to recover vehicle depreciation costs and overhead costs, including AFV and a division administrative fee; MIS fees; and where applicable, the variable costs[] associated with each vehicle.

(2) The division shall calculate the lease and associated rates [lease rates are calculated by the division] according to the vehicle's cost, [class, the period of time that the vehicle's [is] expected to be in service, the optimum number of miles the vehicle is expected to accrue over that period, and the type of lease applicable[.]

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to the division approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by the division under the current preventive maintenance and repair services contract.

(b) A full service lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, as well as all variable costs.

(c) The division shall review agency motor vehicle utilization on an [quarterly] annual basis to identify state vehicles [in an agency's possession or control] that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(d) The division shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to ensure full utilization of all state [fleet motor] vehicles[ in its possession or control].

(5) [In the event that] If a vehicle is turned in for replacement [as a result of reaching the optimum mileage allowed] earlier than expected under the applicable replacement cycle [mileage schedule prior to the end of the period of time that the vehicle is expected to be in service], a rate containing a shorter replacement cycle period [that reflects actual utilization of the vehicle being replaced may] shall be implemented for [said vehicle's replacement] the replacement vehicle.

(6) [In the event that] If a vehicle is turned in for replacement as scheduled, but did not reach [is not in compliance with optimum mileage intended] under the applicable replacement cycle, [a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement] the division shall conduct a utilization review of that agency's fleet to ensure the vehicle is needed. The review may result in the vehicle being[.]

(a) replaced with a new vehicle;
(b) sold; or
(c) repurposed within the division's fleet.

(7) The division shall begin the monthly billing process when the agency receives the vehicle[ receives notice in writing that the vehicle is ready for service.

R27-4-10. Executive Vehicle Replacement.

(1) Executive vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute[Executive vehicles are available only to employees who are assigned a vehicle as part of their compensation package, in accordance with state statute.]

(a) Each fiscal year the division shall establish a standard executive vehicle [type rate and] purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term[,] or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(d) Executives shall have the option of choosing a vehicle other than the standard executive vehicle, with the cost being based on the standard executive vehicle purchase price.

(e) The alternative vehicle selection should not exceed the standard executive vehicle purchase price parameter guidelines.

(f) [In the event that] If the agency chooses an alternative vehicle that exceeds the standard executive vehicle purchase price guidelines, the agency shall pay [for the difference in price between the vehicle requested and the standard executive vehicle purchase price.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the division to "create a capitalization credit program that will allow agencies to divert
(211) In the event that an agency voluntarily surrenders a vehicle to the division under the capitalization credit program, the agency shall receive a capital credit of $1,000, plus the estimated salvage value for the vehicle, for use towards the purchase of a replacement vehicle.

(223) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay the division an amount equal to the difference between the purchase price of the replacement vehicle and the amount of the capital credit.

(224) The division shall, on a quarterly basis, compare actual vehicle utilization against the mileage requirements contained in the applicable replacement cycle. This comparison shall be used to identify vehicles that may be candidates for reassignment, reallocation, or elimination. The division may reassign, reallocate, or eliminate the replacement of vehicles that are chronically out of compliance with the applicable utilization standards when:

(a) intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, or a cost-benefit analysis on the time the vehicle is used does not warrant the vehicle to remain within the agency, the division may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement of vehicles for vehicles that are chronically out of compliance with applicable utilization standards when:

(b) a cost-benefit analysis on the time the vehicle is used does not warrant the vehicle to remain within the agency.

(225) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in this section must comply with the requirements of Section 274-4.5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size;

(b) is identified as a "do not replace" vehicle in the fleet information system;

(c) is a state vehicle not purchased by the division; or

(d) is a seasonal vehicle that has already been replaced.

(228) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the executive director of the Governor's Office of Management and Budget, or the executive director's designee, for a review of the reassignment or reallocation made by the division. If the division requires an agency to relinquish a vehicle due to a reassignment or reallocation, the agency may petition the executive director of the GOPB, or the executive director's designee, for a review. Vehicles that are the subject matter of petitions for review shall remain with the agency until such time as the executive director of the Governor's Office of Management and Budget (GOPB) or the executive director's designee renders a decision on the matter.

R274-4.12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

The division shall conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles. The division shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to ensure optimal utilization of state fleet vehicles in their possession or control.

(229) In conducting the review, the division shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) as applicable, the authorized driver and program each vehicle is assigned to:

(e) location of the vehicle; and

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the information gathered by the division.

R274-4.13. Reassignment or Disposal of Underutilized State Vehicles.

(1) After vehicles have been reviewed in accordance with Section 274-4.12, and chronically underutilized vehicles have been identified, the division shall initiate the steps necessary to reallocate, reassign, or dispose of the vehicle.

(2) At a minimum, the steps taken by the division for reassignment or disposal must include:

(a) A review of the vehicle's history with the assigned agency.
(b) A review the vehicle history with, and direction from, the executive director of the Department of Government Operations, or their designee, regarding the proposed action; and

(c) If approved by the executive director, notice to the agency that the agency has rights per Subsection R27-4-12(7) to petition the executive director of the Governor’s Office of Management and Budget for further review.

(3) If the assigned agency voluntarily turns in the underutilized vehicle, a capital credit shall be established in accordance with Section R27-4-11.

(4) If the assigned agency disagrees with the action, the agency may exercise its right to have a review of the proposed action with the executive director of the Governor’s Office of Management and Budget per Subsection R27-4-12(7).

(5) If there is agreement between the division and the executive director of the Governor’s Office of Management and Budget, then the division shall give notice to the agency that it has been given authority to reassign or dispose of the vehicle in question.

(6) The division shall reassign the vehicle to another fleet location, or begin the process of disposing of the vehicle.

KEY: fleet expansion, vehicle replacement

Date of Last Change: 2021[February 21, 2017]

Notice of Continuation: September 23, 2016

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(a); 63A-9-401(1)(d)(v); 63A-9-401(1)(d)(ix); 63A-9-401(1)(d)(x); 63A-9-401(1)(d)(xi); 63A-9-401(1)(d)(xii); 63A-9-401(4)(ii)

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

The Division of Fleet Operations (DFO) need to complete a five-year review of its administrative rules. This repeal is due to the fact the state fuel network no longer supplies compressed natural gas to the public.

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):

Because the private sector natural gas fueling infrastructure is adequate to support the market, the DFO no longer offers natural gas to the public.

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. The DFO has not provided natural gas to the public for several years.

B) Local governments:

This rule does not affect local governments.

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

This rule does not affect small businesses.

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

This rule does 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):

This rule does not affect other persons.

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

No compliance costs are anticipated.

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):

Since this rule is being repealed and does not affect businesses, there should be no fiscal impact on businesses. Jenney Rees, 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 Government Operations, Jenney Rees, 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 63A-9-702(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:

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: | Cory Weeks, Director | Date: 09/15/2021 |


[ R27.9. Dispensing Compressed Natural Gas to the Public.

R27.9.1. Authority.]

This rule is established pursuant to subsections 63A-9-702(3)
which requires the Department of Government Operations, Division of Fleet Operations (DEO) to make rules establishing requirements for the sale of compressed natural gas (CNG) to the public.

R27.9.2. Definitions.

In addition to the terms defined in Section 63A-9-702, as used in Title 63A, Chapter 9, or these rules, the following terms are defined. (1) “Public” means private individuals or entities as defined in 63A-9-702(1).

(2) “State site” means a fuel site owned and/or operated by the State Fuel Network which dispenses compressed natural gas.

(3) “Geographical compressed natural gas needs of a private individual or entity” means providing CNG fuel to the public beyond one road mile from a privately owned and operated fuel site that is able to meet the natural gas distribution needs of the public.

R27.9.3. Fuel Site Availability.

(1) The division will allow the public to purchase compressed natural gas from the state’s fuel network if:

(a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs as defined in R27.9-2(3) and;

(b) there are no emergencies that warrant the holding of compressed natural gas in reserve for use by state or emergency vehicles as determined by the division.

R27.9.4. Terms of Operation.

(1) State owned CNG fuel sites are intended to be operational 24 hours a day, 7 days a week and will be available to the public with the exception of locally posted time restrictions.

(2) CNG dispensing priority shall be given to state and local agencies.

(3) Public customers shall only be able to purchase CNG fuel from the state site with an accepted credit card.

(4) Public customers will be limited to 25 GGE per vehicle per day unless otherwise authorized by the division.
(5) Violation of any term of operation may result in the revocation or suspension of a private individual or entity’s authorization to purchase compressed natural gas from state sites.

R27-9-5. Abuse and Neglect of Fueling Equipment.
Damage to fuel equipment that results from the abuse or neglect by a public customer shall be the responsibility of that customer.

KEY: compressed natural gas, CNG, public fueling
Date of Last Change: March 26, 2012
Notice of Continuation: September 23, 2016
Authorizing, and Implemented or Interpreted Law: 63A-9-702(3)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact
Utah Admin. Code Ref (R no.): R152-23 Filing ID 54059

Agency Information
1. Department: Commerce
Agency: Consumer Protection
Building: Heber Wells Building
Street address: 130 E 300 S
City, state and zip: Salt Lake City, UT 84111

Contact person(s):
Name: Daniel Larsen
Phone: 801-530-6145
Email: dblarsen@utah.gov

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

General Information
2. Rule or section catchline:
R152-23. Health Spa Services Protection Act Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being repealed and reenacted because of changes to Title 13, Chapter 23, Health Spa Services Protection Act, made by H.B. 321 in 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 rule establishes the process by which a health spa may apply for registration of a health spa facility, claim exemption from surety requirements in accordance with Section 13-23-5, and provide notices to the Division of Consumer Protection (Division). This rule also establishes the minimum requirements with respect to disclosing a consumer’s right to rescind a contract for health spa services. As compared to the repealed rule, the proposed rule streamlines registration and surety exemption requirements, conforms to the rulewriting manual, reflects changes made by H.B. 321 (2021), and more closely adheres to the Division’s rulemaking authority with respect to the content of a health spa’s contract for health spa services.

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 any fiscal impact on state government revenues or expenditures. Any fiscal impact on state government was addressed in the Fiscal Note to H.B. 321 (2021).

B) Local governments:
This rule is not expected to have any fiscal impact on local governments’ revenues or expenditures because it does not create any new requirements local governments must follow, nor does it otherwise constrain local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
This rule is not expected to have any fiscal impact on small businesses because it does not impose requirements upon small businesses beyond what is required by Title 13, Chapter 23, Health Spa Services Protection Act. Further, the expected measurable fiscal impact on small business revenues is identified in the fiscal notes to H.B. 321 (2021).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have any fiscal impact on non-small businesses because it does not impose requirements upon non-small businesses beyond what is required by Title 13, Chapter 23, Health Spa Services Protection Act. Any fiscal impact on non-small businesses was addressed in the Fiscal Note to H.B. 321 (2021).

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it does not impose requirements upon them beyond what is required by Title 13, Chapter 23, Health Spa Services Protection Act.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule does not impose compliance costs upon affected persons beyond what is required by Title 13, Chapter 23, Health Spa Services Protection Act.

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 to repeal and reenact the Health Spa Services Protection Act Rule. This rule repeal and reenactment was necessary due to the amount of changes that needed to be made. The proposed rule presents a streamlined registration process for a health spa facility, exemptions from surety requirements, and the mechanism to provide notices to the Division. Importantly, the proposed rule allows for minimum disclosure requirements for a consumer’s right to rescind a contract for health spa services. The proposed rule reflects changes made by H.B. 321 (2021). Margaret 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.)

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B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret 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:

Subsection 13-23-5(1) Subsections 13-23-5(1)(a)(iv) (A) through (C) Subsection 13-23-5(1)(h)

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: Margaret Busse, Executive Director Date: 10/27/2021


These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended.


These rules shall apply to the conduct of every health spa within the State of Utah.


In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.
UTAH STATE BULLETIN

(2) “Costs” shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) “Facility” means the physical building where the health spa services are provided.

(4) “Operate” means to advertise health spa services, to sell memberships, or to perform any other function of business by a health spa that is doing business in Utah.

R152-23-4. Registration Requirements.

(1) A health spa may not operate in this state without first having received a registration permit from the Division. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the health spa facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-3(6). If the health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-3 is satisfied.

(f) The number of consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each employee, independent contractor, or any other health spa service provider who will be authorized by the registrant to use the health spa’s facilities in providing health spa services to consumers during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

R152-23-5. Health Spa Consumer Contracts for Health Spa Services.

(1) Health Spa consumer contracts shall contain the following provisions:

(a) Each consumer contract shall contain:

(i) the date of the transaction, including the date health spa services will commence and expire;

(ii) the name and address of the health spa facility, and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each consumer contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) A health spa that is required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: “IN THE EVENT THE HEALTH SPA FACILITYCLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO CONSUMER A PRORATA SHARE OF THE CONTRACT COST BASED UPON THE UNUSED TIME REMAINING ACCORDING TO THE CONTRACT.”

(ii) A health spa that is not required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: “IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE (5) MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT.”

(c) All consumer contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the contract are subject to deletion or change at the discretion of the facility.

(d) Each consumer contract shall include one of the following provisions regarding the consumer’s right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) Consumer contracts sold in advance sales shall contain a provision that states as follows: “YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE.

IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME.”

(ii) All other consumer contracts shall contain a provision that states as follows: “YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA FACILITY BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE.

IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO CONSUMER A PRORATA SHARE OF THE CONTRACT COST BASED UPON THE UNUSED TIME REMAINING ACCORDING TO THE CONTRACT.”

(e) All consumer contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

(f) Every consumer contract shall clearly state the beginning and expiration dates of its term. In any event, no consumer contract shall provide for a term of longer than thirty-six (36) months.

(2) The consumer contract or any attachment to it shall clearly state any rules of the health spa that apply to:

(a) the consumer’s use of its facilities and services; and

(b) cancellation and refund policies of the health spa, which shall include:

(i) A clear and unambiguous written statement of the health spa’s cancellation and refund policy for consumers who desire a refund after the three-business-day cooling-off period under Section 13-23-3(6).
R152-23-6. Revision.
(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-5(6).
(2) When the consumer contract is the result of the health spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

(1) In the event a health spa shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide health spa services to consumers holding valid consumer contracts, the health spa shall, after obtaining the Division's approval, immediately refund the unused portion of all fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed.
(2) Within ten (10) business days of the closure of its facility, the health spa shall provide the Division with a copy of each consumer contract that was valid on the date of closure.
(3) The Division shall determine the amount of refunds that shall be made and to whom. Such refunds shall be made under the supervision and with the prior approval of the Division. If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount that is determined to be due to all consumers. The refund amount due shall be determined by multiplying the number of days remaining on the consumer's contract term at the date of closure by the daily cost of the health spa services contract to the consumer at the time of purchase. The health spa shall remain responsible for the balance.
(4) For purposes of Sections 13-23-5(6) and (7), the distance of five (5) miles shall be calculated by the distance traveled by an automobile over a public road.
(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:
(a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;
(b) Information concerning consumers holding contracts with the health spa, including:
(i) the total number of active consumer contracts;
(ii) the name, address, email address, and telephone number of each consumer;
(iii) the total cost of each consumer contract; and
(iv) the effective beginning and ending dates of each consumer contract;
(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;
(d) A description of what action the health spa plans to take with regard to its consumers holding contracts for health spa services, including:
(i) the amount of each consumer's refund;
(ii) any reason refunds are not to be made;
(iii) an explanation of how refunds are to be calculated; and
(iv) copies of the refund checks that the health spa has issued.
(e) Any complaints that the health spa has received from consumers and how the complaints were resolved.
(6) Within thirty (30) days prior to closing, the health spa shall notify consumers of the closure in writing and set forth what actions the health spa plans to take in regards to transfers, cancellations or refunds.
(7) Once the health spa has notified the Division of its intent to cease operations, it may not offer, sell or attempt to sell, solicit the sale of, or become a party to any new contracts to provide health spa services within forty-five (45) days preceding the anticipated date of closure.
(8) In the event a health spa transfers its contracts to an alternative facility located within five (5) miles of the facility of origin, neither the health spa facility transferring consumer contracts nor the health spa facility receiving consumer contracts may charge any additional fees to contract holders in order to gain access to or otherwise utilize services originally contracted for.
(9) Contract transfers shall be serviced at health spa facilities that are comparable to the facility of origin. In instances where consumers have paid for services that are not offered or are otherwise not comparable, the health spa shall obtain written authorization from consumers to transfer to the noncomparable facility or make an offer to rescind the contract.

(1) The surety required by Section 13-23-5(2) shall be provided to the Division not less than thirty (30) days in advance of any advanced sales by any health spa. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division not less than thirty (30) days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.
(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the health spa shall submit another surety within fifteen (15) days following notice by the Division. In no event shall a health spa operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.6.
(3) In addition to consumer refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2)(e) and (g).

R152-23-1. Purpose.
(1) The purpose of this rule is to:
(a) establish the process for:
(i) initial registration of a health spa facility;
(ii) renewal of a health spa facility registration;
(iii) establishing a health spa facility surety exemption;
(iv) notifying the division of any change to an applicant's registration information; and
(b) aid the division's administration and enforcement of Title 13, Chapter 23, Health Spa Services Protection Act.
NOTICES OF PROPOSED RULES

R152-23-2. Authority.
This rule is promulgated in accordance with Subsections 13-2-5(1), 13-23-5(1)(a)(iv)(A) through (C), and 13-23-5(1)(h).

(1) As used in Subsection 13-23-5(1)(a)(i), "operate" means:
(a) to offer for sale or advertise a health spa service; or
(b) to enter a contract for any health spa service.

R152-23-4. Application for Registration or Renewal of Registration.
(1) An application for registration or renewal of registration of a health spa facility shall be submitted on a form approved by the division, and include:
(a) the applicant's:
(i) name, and any alternate name that it uses to do business as a health spa facility;
(ii) street address;
(iii) mailing address;
(iv) telephone number, and if applicable, facsimile number;
(v) email address;
(vi) web address, if it maintains a website;
(b) a person designated by the applicant to be its contact person with whom the division will communicate regarding the application, and that person's:
(i) name;
(ii) street address;
(iii) mailing address;
(iv) telephone number;
(v) email address;
(c) the applicant's registered agent for service of process in the state, and the registered agent's:
(i) name;
(ii) street address;
(iii) mailing address;
(iv) telephone number;
(d) a copy of any contract:
(i) used by the applicant in connection with the sale of a health spa service;
(ii) that is drafted in accordance with Title 13, Chapter 23, Health Spa Services Protection Act;
(e) the number of unexpired contracts for a health spa service that:
(i) designate the health spa facility as a consumer's primary location; or
(ii) for a health spa facility's first year of registration, the number of contracts for a health spa service designating the health spa facility as a consumer's primary location the applicant reasonably expects to execute;
(f) a copy of the applicant's:
(i) bond, letter of credit, or certificate of deposit obtained in accordance with Subsection 13-23-5(2) and on a form approved by the division; or
(ii) a surety exemption claim form completed in accordance with Section R152-23-5;
(g) a copy of the applicant's liability insurance policy, in accordance with Subsections 13-23-5(1)(g)(i) and (ii);
(h) a list of each health spa service or combination of health spa services offered by the applicant at the health spa facility, including the price and duration of each service or combination of services; and
(i) the application fee and any applicable late fee.

(1) A health spa that claims exemption from Subsections 13-23-5(2) through (5) shall submit a claim of exemption in the form approved by the division that shall include:
(a) the applicant's:
(i) name, and any alternate name that it uses to do business as a health spa;
(ii) street address;
(iii) mailing address;
(iv) telephone number, and if applicable, facsimile number;
(v) email address;
(b) a statement that identifies the exemption claimed in accordance with Subsections 13-23-6(1)(a) through (e); and
(c) any information necessary to prove the health spa qualifies for a claimed exemption, in accordance with Subsection 13-23-6(2).

R152-23-6. Notification of Closure, Relocation, or Change to Information Required by Registration Application.
(1) A notification made to the division in accordance with Subsection 13-23-5(1)(h) shall be in writing.
(2) A notification made to the division in accordance with Subsection 13-23-5(7) shall be in writing.

A statement made in accordance with Subsection 13-23-6(6)(a) shall be capitalized and in bold text that is no smaller than 12-point size.

KEY: consumer protection, health spas
Date of Last Change: 2021[October 16, 2014]
Notice of Continuation: December 1, 2016
Authorizing, and Implemented or Interpreted Law: [63G-3-201; 13-2-5; 13-23-1]13-2-5(1); 13-23-5(1)(a)(iv)(A) through (C); 13-23-5(1)(h)

NOTICE OF PROPOSED RULE

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UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
### Contact person(s):

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<th>Name</th>
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<th>Email</th>
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<tbody>
<tr>
<td>Daniel Larsen</td>
<td>801-530-6145</td>
<td><a href="mailto:dblarsen@utah.gov">dblarsen@utah.gov</a></td>
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Please address questions regarding information on this notice to the agency.

### General Information

2. **Rule or section catchline:**

   R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule

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

   This amendment to this rule is being enacted as a result of changes to Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act, made by H.B. 199, passed in 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 rule makes conforming changes to statutory citations. Additionally, this rule establishes standards for fingerprint legibility in accordance with Subsection 13-32a-104(7). This rule also incorporates by reference two standards related to electronic capture and transmission of fingerprints, both promulgated by the Federal Bureau of Investigation: Electronic Biometric Transmission Specification, version 11.0, Appendix F: Image Quality Specifications, April 16, 2021 (EBTS 11.0 Appendix F); and Personal Identity Verification Image Quality Specifications, July 10, 2006 (PIV-071006). These incorporated standards are used to determine whether an electronic fingerprint is legible in accordance with Sections 13-32a-104, 13-32a-104.5, and 13-32a-104.6.

### 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 any fiscal impact on state government revenues or expenditures. Any fiscal impact on state government was addressed in the Fiscal Note to H.B. 199 (2021).

   **B) Local governments:**

   This rule is not expected to have any fiscal impact on local governments’ revenues or expenditures because it does not create any new requirements local governments must follow, nor does it otherwise constrain local governments.

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

   This rule is not expected to have any fiscal impact on small businesses because it does not impose requirements upon small businesses beyond what is required by Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act. Further, the expected measurable fiscal impact on small businesses’ revenues were identified in the fiscal notes to H.B. 199 (2021).

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

   This rule is not expected to have any fiscal impact on non-small businesses because it does not impose requirements upon non-small businesses beyond what is required by Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act. Any fiscal impact on non-small businesses was addressed in the Fiscal Note to H.B. 199 (2021).

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

   This rule is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it does not impose requirements upon them beyond what is required by Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act.

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

   This rule does not impose compliance costs upon affected persons beyond what is required by Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act, and what was contemplated in the Fiscal Note to H.B. 199 (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 of Consumer Protection (Division) proposes changes to the Pawnshop and Secondhand Merchandise Transaction Information Act Rule. This amendment harmonizes the rule to the statutory changes to Title 13, Chapter 32a, made by H.B. 199 (2021). The amendment makes conforming changes to statutory citations and establishes a new section for standards for fingerprint legibility in accordance with Subsection 13-32a-104(7). This rule also incorporates by reference two standards related to electronic capture and transmission of fingerprints, both promulgated by the Federal Bureau of Investigation. Margaret Busse, Executive Director
NOTICES OF PROPOSED RULES

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22

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 Commerce, Margaret Busse, 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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<th>First Incorporation</th>
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<tbody>
<tr>
<td>Publisher</td>
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<tr>
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<td>Issue, or version</td>
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<tr>
<th>Second Incorporation</th>
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<tr>
<td>Official Title of Materials Incorporated (from title page)</td>
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<tr>
<td>Date Issued</td>
</tr>
<tr>
<td>Issue, or version</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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: | Margaret Busse, Executive Director |
| Date: | 10/27/2021 |

R152-32a-1. Purpose.

[44-]The purpose of this rule is to specify the information capable of being transmitted electronically to the central database, and to aid the division's administration and enforcement of Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act.

R152-32a-2. Authority.

[44-]This rule is enacted in accordance with Subsections 13-2-5(1), 13-32a-104(7), 13-32a-104.5(6), 13-32a-104.6(3), and 13-32a-106(1)(b).

R152-32a-3. Definitions.

(1) "Electronically extract" means to obtain an identifying mark described by Subsection 13-32a-104(1)(h) using an electronic system that:

(a) does not alter the identifying mark;

(b) does not allow the identifying mark to be altered by a person after it is obtained by the electronic system; and

(c) accurately documents the identifying mark on the ticket.

(2) "Wireless communication device" means:

(a) a cellular telephone; or

(b) a portable electronic device designed to receive and transmit a text message, email, video, or voice communication.


(1) The following information is capable of being transmitted electronically to the central database:

(a) all information described by:

(i) Subsections 13-32a-104(1)(a) through 13-32a-104(1)(c);

(ii) Subsections 13-32a-104(1)(e)(i) and (ii);

(iii) Subsection 13-32a-104(1)(f);

(iv) Subsections 13-32a-104(1)(h)(i) through 13-32a-104(1)(h)(ii)(A);

(v) Subsections 13-32a-104.5(2)(a) through 13-32a-104.5(2)(c)(ii);

(vi) Subsection 13-32a-104.5(2)(d);

(vii) Subsections 13-32a-104.5(2)(f)(i) through 13-32a-104.5(2)(f)(vi);

(viii) Subsections 13-32a-104.5(3)(a) through 13-32a-104.5(3)(b)(v);

(ix) Subsection 13-32a-104.5(4)(a);

(x) Subsections 13-32a-104.5(4)(d) through 13-32a-104.5(4)(f);

(xi) Subsections 13-32a-104.5(4)(h) and (i)(j); and

(xii) Subsections 13-32a-104.6(1)(a) through 13-32a-104.6(1)(g);

(b) an individual's electronic legible fingerprint, in accordance with Subsections 13-32a-104(1)(e)(iv)(A), 13-32a-104(1)(g), 13-32a-104.5(2)(c)(iv), and 13-32a-104.6(1)(v); and

(c) any color digital photograph required by Subsection 13-32a-104(7)(b).

R152-32a-5. Electronic Extraction of an Identifying Mark from a Wireless Communication Device.

(1) A pawn or secondhand business is deemed to have obtained a color digital photograph of an identifying mark in accordance with Subsection 13-32a-104.5(7)(b)(ii)(A) if the pawn or secondhand business electronically extracts the identifying mark from a wireless communication device.

(2) Nothing in this rule relieves a pawn or secondhand business from obtaining a color digital photograph of any identifying mark that is not electronically extracted from a wireless communication device.

R152-32a-6. Fingerprint Legibility Standards and Criteria.

(1) This rule incorporates by reference:

(a) Electronic Biometric Transmission Specification, version 11.0, Appendix F: Image Quality Specifications, promulgated by the United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, April 16, 2021 (EBTS 11.0 Appendix F); and


(2) A tangible fingerprint is legible if the fingerprint:

(a) captures the complete print of an individual's right index finger pressed flat, or other finger if the right index finger is unavailable;

(b) is not smudged or otherwise obscured; and

(c) is made using ink and paper that contrast sufficiently to make the fingerprint's details clearly visible.

(3) An electronic fingerprint is legible if the fingerprint:

(a) captures the complete print of an individual's right index finger pressed flat, or other finger if the right index finger is unavailable; and

(b) is made using a device that satisfies standards established by the Federal Bureau of Investigation, including:

(i) EBTS 11.0 Appendix F; or

(ii) PIV-071006.

KEY: pawnshops, secondhand merchandise dealers, consumer protection, central database

Date of Last Change: 2021 August 10, 2020

Amending Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-32a-104(7)(b)(ii)(A); 13-32a-104.5(6); 13-32a-104.6(3); 13-32a-106(1)(a)
Per Executive Order No. 2021-12, formatting changes are also made throughout to conform the rule to the current edition of the Administrative Rules' Rulewriting Manual, and to streamline licensure pathways and remove unnecessary verbiage. In particular, Subsection R156-31b-301e(3) is removed as unnecessary as the Utah Code and Rule R156-31b already do not provide for changes to the required exams, and references to requirements to submit to a criminal background check are removed throughout this rule as this is duplicative language already present in the Utah Code.

Finally, in accordance with H.B. 287 (2021), the fine table in Section R156-31b-402 Administrative Penalties is amended to remove the penalty for violation of Subsection 58-31b-502(1)(r), as H.B. 287 (2021) modified the requirements for a nurse practitioner prescribing a Schedule II controlled substance and eliminated from the definition of unprofessional conduct establishing or operating a pain clinic without a consultation and referral plan for Schedule II or III controlled substances.

A rule hearing will be held electronically only before the Division using Google Meet. Join with Google Meet: meet.google.com/udt-fnom-xbe; or join by phone: (US) +1 337-886-5045 (PIN: 817589793).

**Fiscal Information**

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

**A) State budget:**

The Division estimates that the proposed amendments will indirectly benefit state agencies who employ nurses, if these state agencies are able to more easily hire qualified nurses to practice in Utah. 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 increased ability to employ qualified nursing candidates will vary widely depending on the requirements of the agencies and the individual characteristics of each nurse. The remainder of these proposed amendments are expected to have no measurable impact on state government revenues or expenditure as they are not expected to impact state government practices or procedures beyond the mandates of H.B. 287 (2021).

**B) Local governments:**

The Division estimates that the proposed amendments will indirectly benefit local governments who employ nurses, if they are able to more easily hire qualified nurses to practice in Utah. The full fiscal and non-fiscal impact on local governments cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that local governments may experience from any resulting increased ability to employ qualified nursing candidates...
will vary widely depending on the requirements of each local government entity and the individual characteristics of each nurse. The remainder of these proposed amendments are expected to have no measurable impact on local governments' revenues or expenditure as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and are not expected to impact local governments' practices or procedures beyond the mandates of H.B. 287 (2021).

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

The proposed amendments to Sections R156-31b-301a, R156-31b-301b, R156-31b-301c, and R156-31b-301d may indirectly benefit the estimated 1,212 small businesses in Utah comprising establishments employing nurses, such as private or group practices, hospitals, or medical centers (NAICS 621399, 621330, 622110, 622310, 622210, and 621610), as the amendments are expected to facilitate the ability of these businesses to hire qualified nurses to practice in Utah; however, the full fiscal and non-fiscal impact on small businesses cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a small business may experience from any resulting increased ability to employ qualified nursing candidates will vary widely depending on the requirements of the small business and the individual characteristics of each nurse. The remainder of these proposed amendments are expected to have no measurable impact on small businesses' revenues or expenditures as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 287 (2021).

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

The proposed amendments to Sections R156-31b-301a, R156-31b-301b, R156-31b-301c, and R156-31b-301d may indirectly benefit the estimated 103 non-small businesses in Utah comprising establishments employing nurses, such as private or group practices, hospitals, or medical centers (NAICS 621399, 621330, 622110, 622310, 622210, and 621610), as the amendments are expected to facilitate the ability of these businesses to hire qualified nurses to practice in Utah; however, the full fiscal and non-fiscal impact on non-small businesses cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a non-small business may experience from any resulting increased ability to employ qualified nursing candidates will vary widely depending on the requirements of the non-small businesses and the individual characteristics of each nurse. The remainder of these proposed amendments are expected to have no measurable impact on non-small business revenues or expenditures as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 287 (2021).

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

The proposed amendments to Sections R156-31b-301a, R156-31b-301b, R156-31b-301c, and R156-31b-301d are expected to benefit qualified applicants for Utah LPN, RN, or APRN licensure by facilitating their ability to become licensed to practice in Utah. The full fiscal and non-fiscal impact on such persons cannot be estimated because the data necessary to determine how many such persons will seek licensure is unavailable, and because the benefits that each new Utah licensee may experience from any resulting increased ability to become employed will vary widely depending on the individual characteristics of each nurse and employer requirements. The remainder of these proposed amendments are expected to have no measurable impact on other persons as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 287 (2021).

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

The Division does not anticipate any compliance costs for any affected persons from these proposed amendments because the proposed amendments will result in a benefit to affected persons and will have no measurable cost impact as they merely streamline and update the rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 287 (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 Nurse Practice Act Rule. Changes and updates were made in accordance with H.B. 287 (2021). Further, the Division has made formatting changes throughout this rule to conform this rule to Administrative Rules' Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12 to reduce barriers to working for nurses. Sections R156-31b-301a, R156-31b-301b, and R156-31b-301c are amended to conform to Section 58-1-302 and the fine table in Section R156-31b-402 for administrative penalties is amended to remove the penalty for violation of Subsection 58-31b-502(1)(d), as H.B. 287 (2021) modified the requirements for a nurse practitioner prescribing a Schedule II controlled substance and eliminated from the definition of unprofessional conduct establishing or operating a pain clinic without a consultation and referral plan for Schedule II or III controlled substances.

Small Businesses (less than 50 employees): The proposed amendments to Sections R156-31b-301a, R156-31b-301b, R156-31b-301c, and R156-31b-301d may indirectly benefit the estimated 1,212 small businesses in Utah comprising establishments employing
nurses, such as private or group practices, hospitals, or medical centers (NAICS 621399, 621330, 622110, 622310, 622210, and 621610). Other amendments are not expected to have a measurable impact on small businesses’ revenues or expenditures as these changes update this rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 287 (2021). Further, the expected measurable fiscal impact on small businesses’ revenues is identified in the fiscal notes for H.B. 287 (2021).

Regulatory Impact to Non-Small Businesses (50 or more employees): The proposed amendments may indirectly benefit the estimated 103 small businesses in Utah comprising establishments employing nurses, such as private or group practices, hospitals, or medical centers (NAICS 621399, 621330, 622110, 622310, 622210, and 621610). However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Margaret W. Busse, Commerce 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 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:

<table>
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<tr>
<th>Section</th>
<th>Subsection</th>
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<tbody>
<tr>
<td>58-31b-101</td>
<td>58-1-106(1)(a)</td>
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<td>58-1-202(1)(a)</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: 12/15/2021

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

On: 11/23/2021 At: 10:15 AM

A rule hearing will be held electronically only before the Division using Google Meet (see information in Box 4 above)

10. This rule change MAY become effective on: 12/22/2021

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: 10/21/2021 |


This rule is known as the "Nurse Practice Act Rule."

In addition to the definitions in Title 58, Chapter 1, General Rule of the Division of Occupational and Professional Licensing, and Title 58, Chapter 31b, Nurse Practice Act, the following rule definitions supplement the statutory definitions:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:
   (a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;
   (b) nursing education courses offered by an approved education program as defined in Subsection (2);
   (c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;
   (d) continuing education approved by any state board of nursing; or
   (e) training or educational presentations offered by the Division.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to mean a prelicensing [means any ]nursing education program that meets the standards [established ]in Sections 58-31b-601[ and R156-31b-602].

(7) "Approved re-entry program" means a program designed to evaluate nursing competencies for nurses that is:
   (a) approved by a state board of nursing; or
   (b) offered by an accredited nursing education program; and
   (c) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9)(a) "Clinical practice experiences" means, as used in the Commission on Collegiate Nursing Education [CCNE] Standards for Accreditation of Baccalaureate and Graduate Nursing Programs, amended 2018, planned learning activities in nursing practice that allow students to understand, perform, and refine professional competencies at the appropriate program level.

(b) "Clinical practice experiences" may be known as clinical learning opportunities, clinical practices, clinical strategies, clinical activities, experiential learning strategies, or practice.

(10) "Completed" an [PN, RN, or APRN pre-licensing] education program[2] under Section 58-31b-302, means:
   (a) graduation from the [pre-licensing] education program, verified by official transcripts showing degree and date of program completion; and
   (b) for an LPN applicant under Subsections 58-31b-302(2)(c) and R156-31-103a(1)(a), may include:
      (i) current enrollment in an RN approved education program; and
      (ii) completion of coursework in the RN approved education program that is equivalent to the coursework of a PN approved education program.

(11) "Comprehensive nursing assessment" means:
   (a) conducting extensive initial and ongoing data collection:
      (i) for individuals, families, groups, or communities; and
      (ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;
   (b) recognizing alterations to previous patient conditions;
   (c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;
   (d) evaluating the impact of nursing care; and
   (e) using data generated from the assessments conducted pursuant to Subsections (a) through (d) to:
      (i) make independent decisions regarding patient health care needs;
      (ii) plan nursing interventions;
      (iii) evaluate any possible need for different interventions; and
      (iv) evaluate any possible need to communicate and consult with other health team members.

(12) "Contact hour" in the context of continuing education means 60 minutes, and may include a ten-minute break.

(13) "Delegate" means:
   (a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;
   (b) [in the course of practice or for an APRN who specializes in psychiatric mental health nursing, to transfer to ]any individual [licensed or ]for an APRN who specializes in psychiatric APRN-supervised clinical experiences within generally accepted [generally accepted industry standards; or
   (c) to transfer to an unlicensed individual, including unlicensed assistive personnel or a responsible caregiver, the authority to perform a task that, according to generally accepted industry standards or law, does not require a nursing assessment as defined in Subsections (11) and (17).

(14) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(15) "Delegator" means:
   (a) a licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed individual the authority to perform a task on behalf of the delegator in accordance with Subsections 58-31b-102[4511][2](g), R156-31b-102(13), and Sections R156-31b-701a, or R156-31b-701b; or
   (b) a responsible caregiver who delegates to an unlicensed direct care worker the performance of nursing care for a patient in accordance with Sections 58-31b-308.1 and R156-31b-701c.

(16)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:
   (i) is demeaning, outrageous, or malicious;
   (ii) occurs during the process of delivering patient care; and
   (iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(17) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:
   (a) verification and evaluation of orders; and
   (b) assessment of:
      (i) the patient's nursing care needs;
      (ii) the complexity and frequency of the required nursing care;
      (iii) the stability of the patient; and
      (iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.
(18) "Foreign nurse education program" means any program that originates or occurs outside of the United States.
(19) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.
(20) "Licensure by equivalency" applies only to a licensed practical nurse and may be warranted if the person seeking licensure:
(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and
(ii) has been unsuccessful on the NCLEX-RN at least one time; or
(b)(i) is currently enrolled in an accredited registered nurse education program; and
(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.
(21) "LPN" means licensed practical nurse.
(22) "MAC" means medication aide certified.
(23) "Medication" means a prescription or nonprescription drug as defined in Subsections 58-17b-102(a), 58-17b-102(b), or 58-17b-102(c) of the Pharmacy Practice Act.
(24) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.
(25) "Non[-]approved education program" means a nursing prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.
(26) "Nurse" means:
(a) an individual licensed under Title 58, Chapter 31b, Nurse Practice Act as:
(i) a licensed practical nurse;
(ii) a registered nurse;
(iii) an advanced practice registered nurse; or
(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or
(b) a certified nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.
(27) "Other specified health care professional," as used in Subsection 58-31b-102(3), means an individual in addition to a registered nurse or a licensed physician who is permitted to direct the tasks of a licensed practical nurse, and includes:
(a) an advanced practice registered nurse;
(b) a certified nurse midwife;
(c) a chiropractic physician;
(d) a dentist;
(e) an osteopathic physician;
(f) a physician assistant;
(g) a podiatric physician;
(h) an optometrist;
(i) a naturopathic physician; or
(j) a mental health therapist as defined in Subsection 58-60-102(5).
(28) "Patient" means one or more individuals:
(a) who receive medical or nursing care; and
(b) to whom a licensee owes a duty of care.
(29) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:
(a) a parent; or
(b) a foster parent; or
(c) a legal guardian; or
(d) a person legally designated as the patient's attorney-in-fact.
(30) "PN" means an unlicensed practical nurse.
(31) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.
(32) "Practica" means working in the nursing field as a student, not exclusive to patient care activities.
(33) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.
(34) "RN" means a registered nurse.
(35) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.
(36) "Supervision" means the global definitions of levels of supervision in Section R156-1-102a, as follows:
(a) "Direct supervision" and "immediate supervision" mean the same as defined in Section R156-1-102a.
(b) "Indirect supervision" means the same as defined in Section R156-1-102a.
(c) "General supervision" means the same as defined in Section R156-1-102a.
(d) "Supervising licensee" means the same as defined in Section R156-1-102a.
(37) "Unlicensed assistive personnel," as used in Subsection 58-31b-102(2), is further defined to mean an unlicensed individual who performs health care services in a complementary or assistive role to a nurse in carrying out acts included within the definition of the practice of nursing.
(b) "Unlicensed assistive personnel" includes the following:
(i) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide permitted or certified by a state agency, unlicensed direct care worker, or any other individual who provides personal care or assistance regarding health[-related] services; and
(ii) a nursing student not licensed as a nurse, who provides care that is not part of the student's formal educational program, and who must comply with applicable laws and rules regarding the student's performance of care.
(38) "Unprofessional conduct," as defined in Title 58, Chapter 1, General Rules of the Division of Occupational and Professional Licensing, and Title 58, Chapter 31b, Nurse Practice Act, is further defined in Section R156-31b-502.

R156-31b-201. Board of Nursing -- Membership.
[In accordance with] Under Subsection 58-31b-201(1)(a), the Board of Nursing membership shall comprise:
(1) one licensed practical nurse;
(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;
(3) four RNs; and
(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education[; and
(5) two public members].

(1) [In accordance with] Under Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.
(2) The duties and responsibilities of the Advisory Peer Education Committee are to:
(a) review applications for approval of medication aide training programs;
(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and
(c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:
(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from each of the following:
   (i) a public nursing program;
   (ii) a private nursing program; and
   (iii) a proprietary nursing program; and
(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.

(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.

(2)(a) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.

(b) Unless the APRN requests that both the APRN and RN licenses remain active, the ANP or APRN license shall be superseded upon the issuance of an APRN or advanced practice registered nurse license.

R156-31b-301a. LPN License — Education, Examination, and Experience Requirements.

(1) [An]Under Subsection 58-31b-302(2), an LPN applicant who has never obtained a license in any state, district, or territory of the United States or in any country shall:
   (a) [under Subsection 58-31b-302(2)(c)] demonstrate that the applicant:
      (i) has successfully completed a PN approved education program that meets the requirements of Section 58-31b-601;
      (ii) has successfully completed a PN approved education program that is equivalent to an PN approved education program under Section 58-31b-601;
      (iii) has completed an RN approved education program that meets the requirements of Section 58-31b-601;
      (iv) if a foreign education program, meets the requirements of Subsection 58-31b-302(2)
      (B) has taken, but not passed the NCLEX-RN at least one time; or
      (iv)(A) is enrolled in an RN approved education program that meets the requirements of Section 58-31b-601; and
   (B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program approved education program; and
   (b) [under Subsection 58-31b-302(2)(f)] pass the NCLEX-PN examination pursuant to Section R156-31b-301e, and
   (c) submit to a criminal background check pursuant to Section R156-31b-301e.

(2) [An]Under Subsection 58-31b-302(2), an LPN applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:
   (a) if the applicant has not practiced as a nurse in any jurisdiction for up to five years, document current compliance with the continuing competency requirements as established in Section R156-31b-303(3); and
   (b) if the applicant has not practiced as a nurse in any jurisdiction for more than five years but less than eight years:
      (i) pass the NCLEX-PN examination within 60 days following the date of application; or
      (ii) complete an approved re-entry program;
   (c) if the applicant has not practiced as a nurse in any jurisdiction for more than eight years but less than ten years:
      (i) complete an approved re-entry program; and
      (ii) pass the NCLEX-PN examination within 60 days following the date of application; or
   (d) if the applicant has not practiced as a nurse in any jurisdiction for more than ten years or more, comply with this Subsection (2) for an applicant who has never obtained an LPN license.

(3) [An]Under Subsection 58-31b-302(2), an LPN applicant who has been licensed in another state, district, or territory of the United States or another country, shall:
   (a) demonstrate that the applicant meets the requirements of Subsections (1)(a) and R156-31b-301e(1); and
   (b) complete the requirements of Subsection 58-31b-302(2) and Subsection (1) for an applicant who has never obtained an LPN license demonstrate that the PN prelicensing education completed by the applicant
      (i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant’s graduation; and
      (ii) if a foreign education program, meets the requirements outlined in Section R156-31b-301a;
   (c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and
   (d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301e.

(3) An applicant who holds a current LPN license in an interstate Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, shall:
   (a) apply for a license within 90 days of establishing residency in Utah; and
   (b) complete each of the requirements pursuant to Subsection [R156-31b-301a](2).

(4) An LPN applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:
   (a) if the applicant has not practiced as a nurse in any jurisdiction for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3); and
   (b) if the applicant has not practiced as a nurse in any jurisdiction for more than five years but less than eight years:
      (i) pass the NCLEX-PN examination within 60 days following the date of application; or
      (ii) complete an approved re-entry program;
   (c) if the applicant has not practiced as a nurse in any jurisdiction for more than eight years but less than ten years:
      (i) complete an approved re-entry program; and
      (ii) pass the NCLEX-PN examination within 60 days following the date of application; or
   (d) if the applicant has not practiced as a nurse in any jurisdiction for more than ten years or more, comply with this Subsection (2) for an applicant who has never obtained an LPN license.

(5) [An]Under Subsection 58-31b-302(2), an LPN applicant who has been licensed in another state, district, or territory of the United States or another country, but whose license has expired or lapsed, shall:
   (a) demonstrate that the applicant meets the requirements of Subsections (1)(a) and R156-31b-301e(1); and
   (b) comply with this Subsection (4) as applicable;
   (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301e.

R156-31b-301b. RN License — Education, Examination, and Experience Requirements.

(1) [An]Under Subsection 58-31b-302(3), an RN applicant who has never obtained a license in any state, district, or territory of the United States or in any country shall:
   (a) [under Subsection 58-31b-302(3)(e)] demonstrate that the applicant has successfully completed an RN approved education program that
   (i) meets the requirements for licensure by endorsement in
   (ii) meets the requirements of Section 58-31b-601; or
(ii) is equivalent to an approved program under Section 58-31b-601; and
(b) under Subsection 58-31b-302(3)(f) pass the NCLEX-RN examination pursuant to Section R156-31b-301d; and
(c) submit to a criminal background check pursuant to Sections 58-31b-302 and R156-31b-301e.

(2) [An]Under Subsection 58-31b-302(3), an RN applicant who holds a current RN license issued by another state, district, or territory of the United States, or another country, shall:
(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;
(b) complete the requirements of Subsection 58-31b-302(3) and Subsection (1) for an applicant who has never obtained an RN license, and Subsection (2)(a) for an applicant who has obtained an RN license;
(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301d; and
(d) submit to a criminal background check pursuant to Sections 58-31b-302 and R156-31b-301e.

(3) An applicant who holds a current RN license in an interstate Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, shall:
(a) apply for a license within 90 days of establishing residency in Utah; and
(b) complete the requirements [pursuant to Section R156-31b-301d] of Subsection (2).

(4) An RN applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:
(a) if the applicant has not practiced as a nurse in any jurisdiction for up to five years, document current compliance with the continuing competency requirements [as established in Section R156-31b-303];
(b) if the applicant has not practiced as a nurse in any jurisdiction for more than five years but less than eight years:
(i) pass the NCLEX-RN examination within 60 days following the date of application; or
(ii) [successfully] complete an approved re-entry program;
(c) if the applicant has not practiced as a nurse in any jurisdiction for more than eight years but less than ten years:
(i) [successfully] complete an approved re-entry program; and
(ii) pass the NCLEX-RN examination within 60 days following the date of application; or
(d) if the applicant has not practiced as a nurse in any jurisdiction for ten years or more, [comply with this] complete the requirements of Subsection 58-31b-302(3) and Subsection (1), for an applicant who has never obtained an RN license.

(5) [An]Under Subsection 58-31b-302(2), an RN applicant who has been licensed in another state, district, or territory of the United States or another country, but whose license has expired or lapsed, shall:
(a) comply with [this] Subsection [2](b); R156-31b-301d(1); and
(b) comply with [this] Subsection (4) as applicable; and
(c) submit to a criminal background check pursuant to Sections 58-31b-302 and R156-31b-301e.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.
(1) [An]Under Subsection 58-31b-302(4), an applicant for licensure as an APRN shall:
(a) under Subsection 58-31b-302(4)(d), demonstrate that the applicant holds a current, active RN license in good standing;
(b) under Subsection 58-31b-302(4)(e), demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsections[s] 58-31b-601(1) and 58-31b-302(4)(e);
(c) pass a national certification examination for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist pursuant to Section R156-31b-301e, that is administered by a certification body approved by:
(i) the National Commission for Certifying Agencies; or
(ii) the Accreditation Board for Specialty Nursing Certification; and
(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant meets the requirements [outlined in this] Subsection (2) are met; and
(e) submit to a criminal background check pursuant to Subsections 58-31b-302(3) and Subsection 58-31b-301e.
(2) [In accordance with Under Subsection 58-31b-302(4)(g), the supervised clinical practice requirements in mental health therapy and psychiatric mental health nursing [required for an APRN practicing within the psychiatric mental health nursing specialty shall consist of at least 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows:
(i) 1,000 hours shall be credited as a block of time for completion of Clinical Practice Experience in an approved education program in psychiatric mental health nursing, regardless of the number of hours completed by the applicant; and
(ii) the remaining 3,000 hours shall:
(A) be completed after passing the applicable national certification examination, and within five years of graduation from an accredited master's or doctoral level educational program;
(B) include a minimum of 1,000 hours of mental health therapy practice; and
(C) include at least 2,000 clinical practice hours completed under the supervision of:
(I) an APRN specializing in psychiatric mental health nursing;
(II) a licensed mental health therapist as delegated by the supervising APRN; or
(III) a physician holding active board certification with the American Board of Psychiatry and Neurology, or equivalent as determined by the Division.
(b) An applicant who obtains [all or part of] the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent to the training required under this Subsection (2)(a).
(c) [An] An approved supervisor shall verify the applicant's practice as a licensee engaged in the practice of mental health therapy for at least 4,000 hours in a period of at least two years.
(d) Duties and responsibilities of a supervisor include:
(i) maintaining a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
(ii) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and
(iii) submitting appropriate documentation to the Division for work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state, district, or territory of the United States, or another country, shall:
   (a)(i) demonstrate that the license issued by the other [state or country] is current, active, and in good standing as of the date of application; jurisdiction meets the requirements for endorsement in Subsection 58-1-302(1); and
(ii) document current national certification as a nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist pursuant to Section R156-31b-301e, from a certification body approved by:
       (A) the National Commission for Certifying Agencies; or
       (B) the Accreditation Board for Specialty Nursing Certification; or
(b) complete the requirements of Subsection 58-31b-302(4) and Subsection (1) for an applicant who has never obtained an APRN license.[demonstrate that the APRN prelicensing education completed by the applicant:
       (i) if completed on or after January 1, 1987,
       (A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or
       (B) constitutes a bachelor degree in nursing; and
       (ii) if a foreign education program, meets the requirements outlined in Section R156-31b-301d; and
       (iii) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for at least 4,000 hours in the three-year period immediately preceding the date of application; and
       (d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.]

(4) An APRN applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall;
   (a) [demonstrate current certification in the individual's specialty area]; and
   (b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state, district, or territory of the United States, or another country, but whose license has expired or lapsed, shall:
   (a)[(i) comply with this Subsection (3)(b)](a)(ii); and
   (b) demonstrate that the applicant is currently certified in the individual's specialty area; and
   (c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g; or
   (b) complete the requirements of Subsection 58-31b-302(4) and Subsection (1) for an applicant who has never obtained an APRN license.

R156-31b-301d. [Foreign]Nonapproved Nursing Education Programs.

[If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-301c, the applicant shall demonstrate:
   (1)(a) within the year preceding the date of the application, the applicant successfully completed the three components of the
   CGFNS Certification Program and the credentials evaluation service professional report; and
   (b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:
      (i) completed the nursing education program;
      (ii) worked as a nurse;
      (iii) completed an approved re-entry program; or
      (iv) obtained a bachelor's, master's or doctorate nursing degree from an accredited nurse education program; or
      (2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and
      (b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.]

(1) Under Subsections 58-31b-303(1)(b) and R156-31b-301a, an applicant for LPN licensure who graduated from a nonapproved nursing education program shall demonstrate that the nursing education program completed by the applicant is equivalent by submitting:
   (a) a CGFNS Credentials Evaluation Service Professional Report that is acceptable to the Division and the Board;
   (b) a CGFNS Certification Program Verification Letter; or
   (c) documentation of meeting the endorsement requirements of Subsection 58-1-302(1).

(2) Under Subsections 58-31b-303(2)(b) and R156-31b-301b, an applicant for RN licensure who graduated from a nonapproved nursing education program shall submit:
   (a) a CGFNS Certification Program Verification Letter; or
   (b) documentation of meeting the endorsement requirements of Subsection 58-1-302(1).

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, Certified Nurse Midwife, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the approved education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the [applicable]licensure or certification examination pursuant to this [this Subsection (1)(a)] shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as a MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(2)(2) The examinations required under these rules are national examinations and cannot be challenged before the Division.

[R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.]

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(1)[In accordance with]Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle [applicable to] for licensees
under Title 58, Chapter 31b, Nurse Practice Act, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308b through R156-1-308l.

(3) Each applicant for renewal shall comply with the following continuing competency requirements:
   (a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:
      (i) licensed practice for not less than 400 hours;
      (ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or
      (iii) completion of 30 contact hours of approved continuing education hours.
   (b) An APRN shall comply with the following:
      (i)(A) be currently certified or recertified in the licensee's specialty area of practice; or
      (B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and
   (ii)(a) complete a submitted renewal or reinstatement application shall:
      (A) be currently certified or recertified in the licensee's specialty area of practice; or
      (B) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.
      (i) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and
      (ii)(A) be currently certified or recertified in the licensee's specialty area of practice; or
      (B) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.
   (iii) upon issuance of an APRN license.
   (c) An individual who has completed all requirements for licensure.
   (d) complete and sign a license surrender document as provided by the Division.
   (e) complete the following continuing competency requirement of this Subsection (3)(a);
      (f) pay [all-]required fees, including any [applicable-]late fees;
   (g) submit a completed renewal or reinstatement form as applicable to the license desired; and
   (h) complete the term of an APRN intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing shall work under the supervision of an APRN pursuant to R156-31b-301c.

(5) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:
   (a) comply with the competency requirements of this Subsection (3)(a); or
   (b) pay [all-]required fees, including any [applicable-]late fees;
   (c) submit a completed renewal or reinstatement form as applicable to the license desired; and
   (d) complete the term of an APRN intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-402. Administrative Penalties.

An individual holding an APRN intern license specializes in psychiatric mental health nursing shall work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern to:
   (a) inform the Division of examination results within ten calendar days of receipt; and
   (b) cause the examination agency to send the examination results directly to the Division.

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violation of Subsection R156-37-502(1)(a); (f) engaging in disruptive behavior in the practice of nursing; (B) the nature of the nurse's relationship with the surrogate; (A) the nurse's professional judgment in treating the patient; and

(ii) did not result in any form of abuse or exploitation of the surrogate or patient; and

(1) “Unprofessional conduct” includes: (a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license; (b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information; (c) as an RN or LPN, issuing a prescription for a prescription drug to a patient, except in accordance with Section 58-17b-620 or as otherwise legally permissible; (d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following: (i) that standards of nursing practice are established and carried out; (ii) that safe and effective nursing care is provided to patients; (iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability, and current competence to carry out the requirements of their jobs; (e) engaging in sexual contact with a patient surrogate concurrent with the nurse-patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact: (i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way: (A) the nurse’s professional judgment in treating the patient; (B) the nature of the nurse’s relationship with the surrogate; or

(C) the nature of the nurse’s relationship with the patient; (f) engaging in disruptive behavior in the practice of nursing; (g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a); (h) violating [law] federal or state law relating to controlled substances, including self-administering [law] controlled substance that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502;

(i) as an APRN, failing to discuss the risks of using an opiate with a patient or the patient’s guardian before issuing an initial opiate prescription in accordance with Section 58-37-19, regarding discussion with a patient or the patient’s guardian before issuing an initial opiate prescription;

(j) as an APRN, failing [a provision of] Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(k) failing to practice within limits of competency, in violation of Section 58-31b-801. (2) [In accordance with a prescribing practitioner’s order and an HNP, a registered nurse who, in reliance on a school’s policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistant person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation. “Unprofessional conduct” does not include, when licensed as an RN, and in accordance with a school’s policies and Sections R156-31b-70a and R156-31b-701b, delegating or training an unlicensed assistant person to administer medications in accordance with a prescribing practitioner’s order and an HNP.]

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs. (1) [Pursuant to] Under Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016. (2) The provider of a program with limited-time approval pursuant to Subsection (1) shall, pursuant to Subsection (3): (a) disclose to each student who enrolls that:

(i) program accreditation is pending;

(ii) any education completed prior to the accrediting body’s final determination will satisfy, at least in part, state requirements for prelicensure education; and

(iii) if the program fails to achieve accreditation on or before June 30, 2022, a student who has not yet graduated will not be made eligible for the NCLEX by the state; and

(b) attest to each student who enrolls that the program is allowed to enroll new students because it meets the requirements of Subsection 58-31b-601(2)(c).

(3) The disclosure required by [this -]Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (insert the name of the accrediting body). This program is allowed to enroll new students because it meets the requirements of [Utah Code -]Subsection 58-31b-601(2)(c). Any education you complete on or before June 30, 2022, or a final determination by the (insert the name of the accrediting body) will satisfy associated state requirements for licensure. If the (insert the name of the accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

(a) immediately notify the Board of its accreditation status;

(b) immediately and verifiably notify each enrolled student in writing of the program’s accreditation status, including:

(i) the estimated date when the accrediting body will make its final determination as to the program’s accreditation; and
(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and

(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation on or before June 30, 2022, or if a program loses its accreditation, the institution offering the program shall:

(a) submit a written report of official notice of losing accreditation to the Board within ten days of receiving formal notification from the accrediting body;

(b) notify each matriculated and pre-enrollment nursing student about the program's accreditation status;

(c) inform each nursing student who will graduate from a non-accredited program that they will not be eligible for initial licensure through the state; and

(d) provide the Board with a written plan to close the program through the state; and

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program[[4]] shall provide to the Board:

(1) a Board-approved annual report by December 31 of each calendar year; and

(2) copies of [[any]] correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.


A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for Clinical Practice Experiences or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

(1) is approved by the home state Board of Nursing;

(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or in a Party state;[[7]] as defined in Section 58-31e-102 of the Nurse Licensure Compact, if supervising face-to-face Clinical Practice Experiences or practica experiences; and

(d) are affiliated with an institution of higher education;

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) the selection of an appropriate clinical location, and

(ii) ensuring that each preceptor is licensed in good standing in Utah or in a Party state;[[7]] as defined in Section 58-31e-102 of the Nurse Licensure Compact;[[4]]

(5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and

(b) reports any changes in its accreditation status to the [Utah Board of Nursing] in a timely manner;

(6)(a) submits an annual report to the [Utah Board of Nursing] by August 1 of each year; and

(b) includes in the annual report:

(i) an overview of the number of students placed in Utah facilities;

(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or in a Party state;[[7]] as defined in Section 58-31e-102 of the Nurse Licensure Compact; and

(iii) a verification that it is currently accredited, in good standing, with its accrediting body.


[In accordance with] Under Subsections 58-31b-102(15) and R156-31b-102(12), the delegation of nursing tasks in a non-school setting is as follows:

(1) [Pursuant to] Under Section 58-1-307.1, the nursing tasks that an unlicensed individual may perform without delegation by a health care provider are listed on the Division's website at https://dopl.utah.gov/nurse.

(2) A delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(3) Tasks that are appropriate for delegation with prior assessment are as follows:

(a) a delegator may not delegate to unlicensed assistive personnel a task requiring the specialized knowledge, judgment, or skill of a licensed nurse;

(b) a delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence; and

(c) a nursing task may be delegated if it meets the following criteria, as applied to each specific patient situation:

(i) it is considered routine care for the specific patient;

(ii) it poses little potential hazard for the patient;

(iii) it is generally expected to produce a predictable outcome for the patient;

(iv) it is administered according to a previously developed plan of care; and

(v) it does not inherently involve nursing judgment that cannot be separated from the procedure; and

(d) before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances, and evaluate the following factors to determine the degree of supervision required to ensure safe care:

(i) the stability and condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(iv) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time the task will be performed; and

(v) any immediate risk to the patient if the task is not carried out; and
(e) if a delegator, upon review of the criteria established in this subsection, determines that a proposed delegatee cannot safely provide the requisite care, the delegator may not delegate the task to the proposed delegatee.

(4) Requirements for instruction and demonstration of competency prior to the delegation of tasks are as follows:

(a) in delegating a nursing task, the delegator shall:
   (i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;
   (ii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what timeframe; and
   (iii) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; and
(b)(i) if the employing facility or agency requires initial and ongoing demonstration of competency of direct patient care tasks, and
   (ii) if the employing facility or agency does not require demonstration of competency or does not provide competency documentation that is satisfactory to the delegator, or if a task falls outside tasks in which the proposed delegatee has previously been proven competent, the delegator or qualified educator shall:
   (A) require the proposed delegatee to provide to the delegator or qualified educator a physical or verbal demonstration of the delegated task; and
   (B) document the observed or spoken demonstration; and
   (iii) teaching of a task, demonstration of competency, and documentation may be conducted per individual or in a group training session.

(5) Requirements for a delegator during the supervision and monitoring of tasks are as follows:

(a) provide ongoing appropriate supervision and evaluation of the delegatee;
(b) ensure that the delegator or another qualified nurse is readily available, either in person or by telecommunication, to:
   (i) evaluate the patient's health status;
   (ii) evaluate the performance of the delegated task;
   (iii) determine whether goals are being met; and
   (iv) determine the appropriateness of continuing delegation of the task; and
(c) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(6) A delegatee is prohibited from the following without express permission from the delegator:

(a) further delegate to another person a delegated task, or any part of a delegated task; or
(b) expand the scope of the delegated task.

(7) A medical facility's internal policies or practices required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701b. Delegation of Tasks in a School Setting.

In addition to Section R156-31b-701a, the following requirements apply to the delegation of tasks in a school setting:

(1) before a registered nurse may delegate a task to be performed within a school setting, the registered nurse shall:
   (a) develop an IHP in conjunction with the student and each applicable parent or parent surrogate, educator, and healthcare provider; and
   (b) ensure that the IHP is available to school personnel.

(2) Each task being delegated by a registered nurse shall be identified within the student's current IHP; and

(3)(a) a registered nurse may personally train each unlicensed person who will be delegated the task of administering medications that are routine for the student;
   (b) the training required under subsection (3)(a) shall be performed at least annually;
   (c) a registered nurse may not delegate to an unlicensed individual the administration of [an] medication:
      (i) that has known, frequent side effects that can be life threatening;
      (ii) that requires the student's vital signs or oxygen saturation to be monitored before, during, or after administration; and
      (iii) that is being administered as a first dose in a school setting:
         (A) of a new medication; or
         (B) after a dosage change; or
         (iv) that requires nursing assessment or judgment prior to or immediately after administration; and
   (d) in addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed individual who has been properly trained, the following tasks regarding a diabetic student's IHP:
      (i) administration of a scheduled dose of insulin; and
      (ii) administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) (a) Under Subsection 58-31b-102(13), an LPN shall be expected to:
      (a) conduct a focused nursing assessment;
      (b) plan for and implement nursing care within limits of competency;
      (c) conduct patient surveillance and monitoring;
      (d) assist in identifying patient needs;
      (e) assist in evaluating nursing care;
      (f) participate in nursing management by:
         (i) assigning appropriate nursing activities to other LPNs;
         (ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;
         (iii) observing nursing measures and providing feedback to nursing managers; and
      (iv) observing and communicating outcomes of delegated and assigned tasks; and
      (g) serve as faculty in areas of competence.

   (2) Under Subsection 58-31b-102(14), an RN shall be expected to:
      (a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:
         (i) complete a comprehensive nursing assessment; and
         (ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;
      (b) detect faulty or missing patient information;
      (c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;
      (d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;
(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;
(f) correctly identify changes in each patient's health status;
(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;
(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;
(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;
(j) appropriately advocate for patients by:
  (i) respecting patients' rights, concerns, decisions, and dignity;
  (ii) identifying patient needs;
  (iii) attending to patient concerns or requests; and
  (iv) promoting a safe and therapeutic environment by:
    (A) providing appropriate monitoring and surveillance of the care environment;
    (B) identifying unsafe care situations; and
    (C) correcting problems or referring problems to appropriate management level when needed;
(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:
  (i) patient status and progress;
  (ii) patient response or lack of response to therapies; and
  (iii) significant changes in patient condition;
(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:
  (i) delegating tasks in accordance with these rules and applicable statutes; and
  (ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;
(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;
(n) if acting as a chief administrative nurse:
  (i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;
  (ii) (A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and
  (B) ensure personnel are assigned to nursing positions appropriate to their determined competence and licensure, certification, or registration level; and
  (iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;
  (o) if employed by a department of health:
    (i) implement standing orders and protocols; and
    (ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with Section 58-17b-620;
  (p) serve as faculty in areas of competence; and
  (q) perform any task within the scope of practice of an LPN.
(3) [APRN] Under Subsection 58-31b-102(11), the following scope and standards shall apply to the practice of advanced practice registered nursing:
(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, Clinical Practice Experiences, and certification. The burden to demonstrate competency rests upon the licensee.
(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN in Utah.
(c) An APRN who wishes to practice as an RN in a Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, shall reinstate, qualify for, and obtain an RN Compact license in Utah.


[In accordance with] Under Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.
(1) Under the supervision of a licensed nurse, an MAC may:
(a) administer over-the-counter medication;
(b) administer prescription medications:
  (i) if expressly instructed to do so by the supervising nurse; and
  (ii) via the [approved] routes [as] listed in Subsection 58-31b-102(12)(b);
(c) turn oxygen on and off at a predetermined, established flow rate;
(d) destroy medications per facility policy;
(e) assist a patient with self administration; and
(f) account for controlled substances with another MAC or nurse physically present.
(2) An MAC may not administer medication via the following routes:
(a) central lines;
(b) colostomy;
(c) intramuscular;
(d) subcutaneous;
(e) intrathecal;
(f) intravenous;
(g) nasogastric;
(h) nonmetered inhaler;
(i) intradermal;
(j) urethral;
(k) epidural;
(l) endotracheal; or
(m) gastronomy or jejunostomy tubes.
(3) An MAC may not administer the following kinds of medications:
(a) barium and other diagnostic contrast;
(b) chemotherapeutic agents except oral maintenance chemotherapy;
(c) medication pumps including client controlled analgesia; and
(d) nitroglycerin paste.
(4) An MAC may not:
(a) administer [any] medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;
(b) receive written or verbal patient orders from a licensed practitioner;
(c) transcribe orders from the medical record;
(d) conduct patient or resident assessments or evaluations;
(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;
(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;
(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or
(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) [In accordance with] Under Subsections R156-31b-701(a) or R156-31b-701b, a nurse may refuse to delegate to a MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day [shall] may not supervise more than two MACs per shift.

(b) A nurse [providing nursing services] practicing in a facility that is not required to provide nursing services 24 hours per day may supervise [as many as] up to four MACs per shift.

R156-31b-802. Medication Aide Certified - Approval of Training Programs.

[In accordance with] Under Subsection 58-31b-601(3), the minimum standards for a MAC training program to be approved by the Division in collaboration with the Board, and the process to obtain approval are as follows.

(1) Each MAC training program shall be approved by the Division in collaboration with the Board prior to the program being implemented.

(2) A MAC training program may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:
(a) 60 clock hours of didactic classroom training that is consistent with the [model curriculum in Section R156-31b-803][Curriculum adopted by the National Council of State Boards of Nursing’s Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference]; and
(b) 40 hours of practical training in a long-term care facility.

(4) The classroom instructor and the on-site practical training experience instructor shall:
(a) (i) have an active LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and
(ii) have at least one year of Clinical Practice Experiences; or
(b) (i) be an approved certified nurse aide (CNA) instructor who has completed a “Train the Trainer” program recognized by the Utah Nursing Assistant Registry; and
(ii) have at least one year of Clinical Practice Experiences.

(5)(a) [The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have an active LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and
(B) have at least one year of Clinical Practice Experiences; or
(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a “Train the Trainer” program recognized by the Utah Nursing Assistant Registry; and
(B) have at least one year of Clinical Practice Experiences.

(b) The practical training instructor-to-student ratio shall be no greater than:
(i) 1:2 if the instructor is working with individual students to administer medications; or
(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(e) The on-site training experience instructor shall be [on site] on-site and available at any time if the student is not being directly supervised by a licensed nurse during the Clinical Practice Experiences.

(6) An entity seeking approval to provide a MAC training program shall:
(a) submit to the Division a complete application form prescribed by the Division;
(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;
(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum [referenced in Section R156-31b-803][curriculum in Section R156-31b-803][Section R156-31b-803][Subsection (3)(a); and
(d) document minimal admission requirements, that shall include:
(i) an earned high school diploma, successful passage of the general educational development [GED]-test, or equivalent education as approved by the Board;
(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;
(iii) at least 2,000 hours of experience completed:
(A) as a [certified nurse aide] CNA working in a long-term care setting; and
(B) within the two-year period preceding the date of application to the training program; and
(iv) current cardiopulmonary resuscitation [CPR] certification.


[In accordance with] Under Sections R156-31b-701a or R156-31b-701b, a nurse may refuse to delegate to a MAC the administration of medications to a specific patient or in a specific situation.

KEY: licensing, nurses
Date of Last Change: January 8, 2021
Notice of Continuation: January 8, 2018
Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

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>R156-47b</td>
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Agency Information

1. Department: Commerce
Agency: Occupational and Professional Licensing
Building: Heber M. Wells Building
Street address: 160 E 300 S
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

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
NOTICES OF PROPOSED RULES

General Information

2. Rule or section catchline:
R156-47b. Massage Therapy Practice Act Rule

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The Division of Occupational and Professional Licensing (Division) in collaboration with the Massage Therapy Licensing Board is filing these proposed amendments to clarify and update the rule and implement certain requirements in accordance with statutory changes made by S.B. 149 passed during the 2021 General Session. Additionally, amendments are made in accordance with Executive Order No. 2021-1 and S.B. 23 passed in the 2020 General Session to eliminate unnecessary regulation and reduce barriers to licensure. Finally, under Executive Order No. 2021-12, formatting changes are made to streamline licensure pathways and remove unnecessary verbiage.

In accordance with Executive Order No. 2021-1, the industry organizations recognized by the Division pursuant to Subsection 58-47b-304(1)(n) will now be listed on the Division’s website in accordance with new Section R156-47b-304 that addresses exemptions, and Subsection R156-47b-102(8) that listed industry organizations is deleted as unnecessary.

In accordance with Executive Order No. 2021-1, to eliminate unnecessary regulation and reduce barriers to working, Subsection R156-47b-302(1) is amended to clarify that curricula from a recognized school as defined in Section R156-47b-102 will meet the required curriculum standards. Additionally, Subsection R156-47b-302a(1) is amended to remove provisions that are contrary to statute and conform the requirements for licensure by “equivalent education and training” to Subsection 58-1-302(1), which will allow the less restrictive endorsement licensure pathway now available under Title 58, Chapter 1, after the passage of S.B. 23 (2020).

In accordance with Executive Order No. 2021-12, formatting changes are also made throughout this rule to conform this rule to the current edition of the Administrative Rules’ Rulewriting Manual, and to streamline licensure pathways and remove unnecessary verbiage. In particular: 1) Subsection R156-47b-102(12), which defines “NCBMB”, is deleted as obsolete because this organization is no longer recognized nor mentioned in the Utah Code as a testing provider; 2) Section R156-47b-302c is streamlined and updated to incorporate all massage apprenticeship standards; 3) Section R156-47b-302d is deleted in its entirety, to remove obsolete references to “good moral character,” and unnecessary and duplicative statutory references for consideration of crimes that the Division and the Board already consider as potentially disqualifying convictions under Sections 58-1-401 and 58-1-501; 4) Section R156-47b-302e is deleted as unnecessary as its separate and duplicative apprenticeship provisions have been incorporated into streamlined and updated Section R156-47b-302c for massage apprenticeship standards; and 5) Section R156-47b-503 is amended to clarify that unlawful conduct is in accordance with all of Section 58-1-501.

A rule hearing will be held electronically before the Division via Google Meet. Join with Google Meet: meet.google.com/uzw-pudn-ovr; or join by phone: (US) +1 601-963-2015 (PIN: 885723467).

Fiscal Information

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

A) State budget:
These amendments are not expected to have a measurable impact on state government revenues or expenditure as they will not impact state government practices or procedures beyond providing additional clarity on processes.

B) Local governments:
No local government agencies will be directly or indirectly affected by these rule changes because the constrained parties consist only of individuals applying for or appropriately licensed in the massage therapy profession. Additionally, there are no local government entities acting as businesses that will be impacted.

C) Small businesses (“small business” means a business employing 1-49 persons):
The proposed amendments to Section R156-47b-302a regarding equivalent education and training may indirectly benefit small businesses who employ massage therapists (North American Industry Classification System (NAICS) 621399, 812199), if these small businesses are able to more easily hire one or more experienced massage therapists who have been able to obtain a Utah license and enter into practice in Utah. 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 massage therapist.

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

These proposed rule changes are not expected to impact non-small businesses because there are no non-small businesses in Utah in the industries in question.

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 proposed amendments to Section R156-47b-302a will allow easier entry into practice for persons who are able to become licensed in Utah under the less restrictive endorsement licensure pathway under Title 58, Chapter 1, therefore, these amendments are expected to benefit those experienced persons who choose to become licensed in Utah and 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 person. The remainder of the proposed amendments are not expected to result in a fiscal impact to any affected persons as they simply conform the rule to statutory changes and streamline and update this rule in accordance with Executive Orders No. 2021-1 and 2021-12.

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

The Division does not anticipate any compliance costs for any affected persons from these proposed amendments because the proposed amendments will result in a benefit to affected persons and have no measurable cost impact as they simply conform this rule to statutory changes and streamline and update this rule in accordance with Executive Orders No. 2021-1 and 2021-12.

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, in collaboration with the Massage Therapy Licensing Board, proposes amendments to clarify and update the Massage Therapy Practice Act Rule and implement certain requirements in accordance with statutory changes made by S.B. 149 (2021). Further, amendments are made in accordance with Executive Order No. 2021-1 and S.B. 23 (2020) to eliminate unnecessary regulation and reduce barriers to licensure. Under Executive Order No. 2021-12, formatting changes are made throughout to update the rule consistent with the Administrative Rules' current Rulewriting Manual and remove duplicate language already present in the Utah Code.

Small Businesses (less than 50 employees): The proposed amendments may indirectly benefit small businesses who employ massage therapists (NAICS 621399, 812199). These changes may allow these small businesses to more easily hire one or more experienced massage therapists who have been able to obtain a Utah license and enter into practice in Utah. Further, the expected measurable fiscal impact on small businesses' revenues is identified in the fiscal notes for S.B. 149 (2021).

Regulatory Impact to Non-Small Businesses (50 or more employees): These rule amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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.)

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<tr>
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Margaret W. Busse, Executive Director

62
Department of Education as a reliable authority in assessing the quality of education or training provided by the school or institution.

(2) "Body wrap" means a body treatment that:
   (a) may include one or more therapeutic preparations;
   (b) is not for cosmetic purposes; and
   (c) maintains modesty by fully or partially draping the body.

(3) "Clinic" means performing the techniques and skills learned as a student under the curriculum of a registered school or an accredited school on the public, while in a supervised student setting.

(4) "Direct supervision" as used in Subsection 58-47b-302(3)(c) means that the supervising licensee, acting within the scope of the supervising licensee's license, is in the facility where the apprentice is performing massage, and directs the work of the apprentice pursuant to this chapter.

(5) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, outside a school of massage meeting the standards in Section R156-47b-302 including internet, audio and visual recordings, or other correspondence.

(6) "FSMTB" means the Federation of State Massage Therapy Boards.

(7) "Hands on instruction" means direct experience with or application of the education or training in either a school of massage therapy or apprenticeship.

(8) "Industry organization", as used in Subsection 58-47b-304(1)(m), means any of the following organizations:
   (a) American FootZoneology Practitioners Association (AFZPA);
   (b) American Reflexology Certification Board (ARCB);
   (c) Butterfly Expressions, LLC;
   (d) Foot Zone Center LLC;
   (e) Reflexology Association of America (RAA);
   (f) Society of Ortho-Bionomy Internation; or
   (g) Utah Foot Zone Association.

(9) "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(10) "Manipulation", as used in Subsection 58-47b-102(6)(b), means contact with movement, involving touching the clothed or unclothed body.

(11) "Massage client services" means practicing the techniques and skills learned as an apprentice in training under direct supervision.

(12) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(13) "Recognized school" means a school located in a state other than Utah, whose students, upon graduation, are recognized by that jurisdiction as having completed the educational requirements for licensure in that jurisdiction.

(14) "Unprofessional conduct", as defined in Title 58, Chapter 47b, is further defined, in accordance with Subsection 58-1-203(1)(c) and Section 58-47b-502, in Section R156-47b-502.

R156-47b-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 47b, Massage Therapy Practice Act.

(1) [In accordance with] Under Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes shall demonstrate the following standards at the time of graduation:

(a) (i) graduation from a licensed or recognized school outside the state of Utah with a minimum of 500 hours;
(ii) completion of the examination requirements; and
(iii) practice as a licensed massage therapist for a minimum of three years; or
(b) for an applicant with foreign education and training, a credential evaluation from one of the following agencies by submitting documentation of:

(A) the Utah Department of Commerce, Division of Consumer Protection; or
(B) [be registered [with] an accrediting agency recognized by the United States Department of Education; or
(C) the Board of Massage Therapy of another state, district, or territory of the United States or a foreign country that meets the following standards at the time of graduation:

(2) Hours of supervised training obtained while licensed as a massage therapy apprentice [trained in accordance with] Under Subsection R156-47b-302c(5) may not be used to satisfy any of the required minimum of 600 hours of school instruction [specified] in Section R156-47b-302(2).

(3) Hours of instruction or training obtained while enrolled in a school of massage having a curriculum meeting the standards [in accordance with] of Section R156-47b-302(2) may not be used to satisfy any of the required minimum of 1,000 hours of supervised apprenticeship training [specified] in Subsection R156-47b-302c(5).


[In accordance with] Under Subsections 58-47b-302(2)(f)(e) and 58-47b-302(3)(f)(e), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall pass:

(a) the Federation of State Massage Therapy Boards [FSMTB] Massage and Bodywork Licensing Examination (MBLEx); or
(b) a predecessor exam shall be accepted, if the exam was passed during the time the exam was accepted by the Division.

R156-47b-302c. Massage Apprenticeship Standards [for a Supervisor].

[In accordance with] Under Subsections 58-47b-302(2)(e)(ii) and 58-47b-302(3)(d), an apprentice supervisor shall the following standards are established for a massage apprenticeship program:

(1) A supervisor and apprentice may not begin an apprenticeship program until:

(a) the apprentice is licensed as a massage apprentice; or
(b) the supervisor is approved by the Division; and
(2) not begin a new apprenticeship program until:

(a) [c][unless otherwise approved by the Division in collaboration with the Board, each of the supervisor's previous apprentices has passed the examination requirements];
(b) the supervisor shall meet with the Board at the next appropriate Board meeting;
(c) the supervisor complies with subsection (1); and
(d) the apprentice has completed an apprenticeship program:

(2) A massage therapist may not serve as a supervisor if the massagetherapist has been disciplined for unlawful or unprofessional conduct with the Board; and
(3) The Division, in collaboration with the Board, may consider supplemental coursework of an applicant who has completed the minimum 600 curricula hours, but has incidental deficiencies in one or more of the categories [specified] in Subsections R156-47b-302(2)(a) through (f).
(4) A supervisor may not supervise more than two apprentices at one time, unless otherwise approved by the Division in collaboration with the Board.

(5) The supervisor shall train the apprentice in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;
(b) pathology - 40 hours;
(c) massage theory - 50 hours;
(d) massage techniques including the five basic Swedish massage strokes - 120 hours;
(e) massage client service - 300 hours;
(f) hands on instruction - 310 hours;
(g) professional standards, ethics and business practices - 40 hours; and
(h) sanitation and universal precautions including CPR and first aid - 15 hours.

(6)(a) The supervisor shall submit with the apprentice's application a curriculum content outline that includes a list of the resource materials to be used, which has been preapproved by the Division.

(b) The apprentice shall follow the submitted Division-approved curriculum content outline.

(7) The supervisor and apprentice shall:

(a) display a conspicuous sign near the apprentice's workstation stating "Apprentice in Training";
(b) keep a daily record that includes:

[i] the number of hours of instruction and training completed;
[ii] the number of hours of client services performed; and
[iii] the number of hours of training completed;

(c) make the apprentice's training records available to the Division immediately upon request;

(d) verify the completion of the apprenticeship program on forms available from the Division;

(e) notify the Division within ten working days if the apprenticeship program is terminated;

(f) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(g) ensure that the apprentice performs the massage client services as required in Subsection (5)(d) only on the public, and performs the other hands on instruction or practice as required by the apprentice on an apprentice or supervisor.


(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsections 58-1-501(2)(e), and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 1, and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, may disqualify an applicant from becoming licensed, or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2 and 3;
(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;
(iii) any offense involving controlled dangerous substances; or
(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-202.

R156-47b-302e. Standards for an Apprentice.

In accordance with Subsection 58-1-302(2)(e)(ii), an apprentice shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and
(b) the supervisor is approved by the Division;

(2) obtain training from an approved apprentice supervisor in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;
(b) pathology - 40 hours;
(c) massage theory - 50 hours;
(d) massage techniques including the five basic Swedish massage strokes - 120 hours;
(e) massage client service - 300 hours;
(f) hands on instruction - 310 hours;
(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(3) follow the approved curriculum content outline;

(a) submitted with the apprentice application including the list of the resource materials to be used; or

(b) previously submitted by the approved supervisor meeting current requirements including the list of the resource materials to be used;

(4) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(5) keep a daily record which shall include:

(a) the number of hours of instruction and training completed;
(b) the number of hours of client services performed; and
(c) the number of hours of training completed;

(6) make available to the Division, upon request, the training records;

(7) The supervisor and apprentice shall:

(a) display a conspicuous sign near the apprentice's workstation stating "Apprentice in Training";
(b) keep a daily record that includes:

[i] the number of hours of instruction and training completed;
[ii] the number of hours of client services performed; and
[iii] the number of hours of training completed;

(c) make the apprentice's training records available to the Division immediately upon request;

(d) verify the completion of the apprenticeship program on forms available from the Division;

(e) notify the Division within ten working days if the apprenticeship program is terminated;

(f) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(g) ensure that the apprentice performs the massage client services as required in Subsection (5)(d) only on the public, and performs the other hands on instruction or practice as required by the apprentice on an apprentice or supervisor.


(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsections 58-1-501(2)(e), and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 1, and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, may disqualify an applicant from becoming licensed, or

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(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2 and 3;
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(iv) conspiracy to commit or any attempt to commit any of the above offenses.

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(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-202.
(7) verify the completion of the apprenticeship program on forms available from the Division;
(8) notify the Division within ten working days if the apprenticeship program is terminated; and
(9) perform the massage client services required in Subsection (2)(d) only on the public under direct supervision; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

(1) [In accordance with] Under Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b, Massage Therapy Practice Act is established [by rule] in Section R156-1-308a.
(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308e.

R156-47b-304. Exemptions from Licensure.  
Under Subsection 58-47b-304(1)(n)(i), the industry organizations that are recognized by the Division are listed on the Division’s website at dopl.utah.gov/int under Related Information - Resources.

“Unprofessional conduct” includes:
(1) engaging in any lewd, indecent, obscene, or unlawful behavior while acting as a massage therapist;
(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;
(3) practicing as a massage apprentice without direct supervision [in accordance with Subsection 58-47b-102(4)];
(4) as an apprentice supervisor, failing to provide [and/or to document adequate instruction or training [as applicable]] as required by Title 58, Chapter 47b, Massage Therapy Practice Act or Rule R156-47b;
(5) as an apprentice supervisor, advising, directing, or instructing an apprentice in any instruction or behavior that is inconsistent, contrary, or contradictory to established professional or ethical standards of the profession;
(6) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;
(7) failure to use appropriate draping procedures to protect the client’s personal privacy; and
(8) failing to conform to the generally accepted and recognized standards and ethics of the profession [including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.]

[In accordance with] Under [Section 58-1-501(1)(a) and (c)], unless otherwise ordered by the presiding officer, the fine schedule in Section R156-1-502 shall apply to citations issued under Title 58, Chapter 47b, Massage Therapy Practice Act.

[In accordance with] Under Subsection 58-28-307(12)(c), a massage therapist practicing animal massage shall have received 60 hours of animal massage therapy training in the following areas:

(1) quadruped anatomy;
(2) the theory of quadruped massage; and
(3) supervised quadruped massage experience.

KEY: licensing, massage therapy, massage therapist, massage apprentice
Date of Last Change: [October 11, 2018]2021  
Notice of Continuation: April 4, 2017  
Authorizing, and Implemented or Interpreted Law:  58-1-106(1)(a); 58-1-202(1)(a); 58-47b-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: New
Utah Admin. Code Ref (R no.): R251-713  Filing ID 54050

Agency Information
1. Department: Corrections
Agency: Administration
Street address: 14717 S Minuteman Dr  Draper, UT 84020
City, state and zip:

Contact person(s):
Name: Matt Anderson  Phone: 801-545-5589
Email: mattanderson@utah.gov

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

General Information
2. Rule or section catchline:
R251-713. Jail Contracting Funds

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Pursuant to S.B. 249, which passed during the 2021 General Session, the Department of Corrections (Department) is required to contract with participating counties to use a specified number of county jail beds each fiscal year to house state inmates. Funds have been allocated to the Department to pay for these county jail beds at a fixed rate. This rule details when and how these funds will be disseminated to participating counties.

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 that any remaining allocated funds not paid to counties for jail beds used during a given fiscal year will be divided between the participating counties at the conclusion of the fiscal year. This rule also details the calculations that will be used to divide the remaining funds
between the counties proportional to their participation in jail contracting.

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 any fiscal impact on state government revenues or expenditures because, consistent with S.B. 249 (2021), the state funds being disseminated to participating counties under this rule have already been allocated to the Department for this purpose.

B) Local governments:
This rule provides that any remaining funds allocated for jail contracting will be disseminated to participating counties at the end of the fiscal year. As a result, it is estimated that local counties may experience a direct fiscal benefit. The Department is unable to measure the exact fiscal benefit to local counties because the amount of any remaining funds to be disseminated under this rule is entirely dependent on the number of jail beds used by the Department in participating counties to house state inmates during each fiscal year.

C) Small businesses ("small business" means a business employing 1-49 persons):
This rule is not expected to have any fiscal impact on small businesses because this rule applies to state and local governments only.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have any fiscal impact on non-small businesses because this rule applies to state and local governments only.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule is not expected to have any fiscal impact on other persons because this rule applies to state and local governments only.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
This rule is not expected to impose any compliance costs on 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):
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. Brian Nielson, 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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Net Fiscal Benefits

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B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Corrections, Brian Nielson, 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 63G-3-202 | Section 64-13-10
Public Notice Information
9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: Brian Nielson, Executive Director Date: 10/25/2021

R251. Corrections, Administration.
R251-713. Jail Contracting Funds.
R251-713-1. Authority and Purpose.
1. This rule is authorized by Sections 63G-3-201 and 64-13-10.
2. This rule provides for the disbursement of funds allocated to the Department pursuant to Sections 64-13e-103 and 64-13e-103.2 for jail contracting.

R251-713-2 Definitions.
1. "Alternative treatment beds" means beds at county correctional facilities that are dedicated to an alternative treatment program for state inmates pursuant to Subsection 64-13e-103.2(2)(b).
2. "Alternative treatment percentage" means a percentage determined by dividing the amount paid by the Department to a county for alternative treatment beds used during a given fiscal year by the total amount paid by the Department to contracting counties for alternative treatment beds during the same fiscal year.
3. "Contracting county" means a county with whom the Department has contracted during the fiscal year for the housing of state inmates pursuant to Sections 64-13e-103 and 64-13e-103.2.
4. "Department" means the Utah Department of Corrections.
5. "Housing beds" means beds at county correctional facilities, other than treatment program beds and alternative treatment beds, that are dedicated to housing state inmates.
6. "Housing percentage" means a percentage determined by dividing the amount paid by the Department to a county for housing beds used during a given fiscal year by the total amount paid by the Department to contracting counties for housing beds during the same fiscal year.
7. "Jail contracting funds" means funds allocated to the Department for housing state inmates in county correctional facilities pursuant to Sections 64-13e-103 and 64-13e-103.2.
8. "State inmate" means an individual who is committed to the custody of the Department and housed in a county correctional facility under a contract entered into between a contracting county and the Department pursuant to Sections 64-13e-103 and 64-13e-103.2.
9. "Treatment program percentage" means a percentage determined by dividing the amount paid by the Department to a county for treatment program beds used during a given fiscal year by the total amount paid by the Department to contracting counties for treatment program beds during the same fiscal year.
10. "Treatment program beds" means beds at county correctional facilities that are dedicated to a treatment program for state inmates pursuant to Subsection 64-13e-103(3)(a)(i).

R251-713-3 Jail Reimbursement.
1. The Department will pay contracting counties for treatment program beds, alternative treatment beds, and housing beds used by the Department during the fiscal year in accordance with the contracts entered into by the Department and the contracting counties pursuant to Sections 64-13e-103 and 64-13e-103.2.
2. At the conclusion of each fiscal year, the Department will divide any remaining jail contracting funds between the contracting counties in accordance with Section R251-713-3.
3. Any funds designated by the Department for treatment program beds pursuant to Subsection 64-13e-103.2(2)(a) that have not been paid pursuant to Subsection R251-713-3(1) by the end of the fiscal year will be divided proportionally among the participating contracting counties based on each county's treatment program percentage.
4. Any funds designated by the Department for alternative treatment beds pursuant to Subsection 64-13e-103.2(2)(b) that have not been paid pursuant to Subsection R251-713-3(1) by the end of the fiscal year will be divided proportionally among the participating contracting counties based on each county's alternative treatment percentage.
5. Any remaining jail contracting funds that have not been paid pursuant to Subsection R251-713-3(1) by the end of the fiscal year and were not designated by the Department for treatment program beds or alternative treatment beds will be divided proportionally among the contracting counties based on each county's housing percentage.
6. Payments made by the Department pursuant to Subsection R251-713-3(2) through Subsection R251-713-3(5) will be distributed to the appropriate contracting county by July 31st of the following fiscal year.

KEY: county jails, state inmates, inmate placement program
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 64-13-10; 64-13e-103; 64-13e-103.2

NOTICE OF PROPOSED RULE
TYPE OF RULE: Amendment
Utah Admin. Code Ref (R no.): R270-1 Filing ID 53432

Agency Information
1. Department: Crime Victim Reparations
2. Agency: Administration
3. Street address: 350 E 500 S Ste 200

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
**General Information**

2. **Rule or section catchline:**

R270-1. Award and Reparations Standards

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

The agency director and the Reparations Program Manager have been reviewing with the agency's legal counsel areas in the rule that could be more clearly defined. Additionally, the agency has been reviewing its processes, including those related to the payment of medical services, specifically the opportunity for inconsistent billing and payment practices. These issues and matter were discussed in open and public meetings with the Crime Victim Reparation and Assistance (CVRA) Board. The CVRA Board instructed that the agency provide proposed draft rule language to address the concerns and provide those drafts to the Board for the Board to contemplate. The rule changes being proposed have been contemplated, amended, and approved by the Board in open public meetings.

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

The changes add definitions for clarity. For clients without health insurance, changes standard for payment from a percentage of amounts billed to the use of PEHP insurance fee schedule for non-hospital medical providers. Establishes 50% of amount billed as payment rate for hospital services for clients without health insurance, which is the rough equivalency of average PEHP contracted rates. The changes also create additional consistency of medical payments for medical services and clarify circumstances in which collateral sources can be waived and creates clarity in other areas. The primary intent is to standardize payment rates with established health insurance industry standards for agency clients that do not have insurance. This creates greater consistency in professional practices for businesses, the agency, and for the public, by setting industry agreed upon and accepted standard rates for established, commonly accepted and coded medical practices, as opposed to the agency simply paying a percentage of whatever the service provider chooses to bill for any specific services. This also formalizes and places the agency in a position to conduct business practices consistent and in accordance with the standard business practices of the profession.

**Fiscal Information**

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

A) **State budget:**

It is important for this purpose to explain that if an applicant to the program has health insurance, the applicant is required to use that health insurance and the agency will pay the eligible applicants' crime related and allowable medical expense co-pays and deductibles (or other "patient responsibilities") only. However, if the applicant does not have health insurance, the agency will act as the eligible applicants' health insurance when considering crime related and allowable medical treatment. Currently, the agency pays 60% of whatever amount the service provider chooses to bill the agency or the uninsured patient for the service. This rule will require the agency to pay the service provider the agreed upon contracted PEHP insurance rate for the specific services, without regard to what the service provider has billed. There are many variables to consider and any estimates in this section would be mere guesses.

For example, the agency can only guess how many program applicants will have health insurance. While https://www.statista.com/statistics/238836/health-insurance-status-of-the-total-population-of-utah/ shows that Utah's percentage of population that is uninsured is 9.6%, one cannot merely assume therefore that 9.6% of applicants to the program will be uninsured because not all Utah residence are equally vulnerable to violent victimization.

Furthermore, it is unknown if service providers inflate service rates billed to the agency or uninsured patients, or if they bill the agency and/or uninsured patients at the same rates they bill health insurance companies. A rough comparison of 50 Current Procedural Terminology (CPT) codes, which are commonly associated with trauma injuries that the agency frequently encounters shows that on average the PEHP fee schedule to which service providers have agreed, is about 17% less than the average amount the agency paid for those same services, when paying 60% of the amount billed by the same pool of service providers.

One cannot however, assume the agency will experience a 17% savings on non-hospital medical services and must consider the rate or number of uninsured clients the agency might serve. Additionally, one has no method of determining what portion or amount of the aggregate amount paid for non-hospital medical expenses were paid on behalf of uninsured vs. insured patients and therefore, it would not be accurate to factor the 9.6% state's...
uninsured rate into this equation.

The agency spent almost $1,500,000 in state fiscal year 2021 in the category of non-hospital medical services. It is safe to say that the agency may save some portion near 17% of the amount billed by those of the approximate 10,000 licensed medical service providers in the state who provided services to uninsured, approved applicants to the program. However, the amount of such saving would be inestimable for the reasons explained above.

Similarly, it would be inappropriate to presume one could estimate that because the rule change lowers the reimbursement rate from 60 to 50% of the amount billed for in-hospital medical services, that there would be a 10% savings to the state in that category of expenditures. The agency spent just over $1,000,000 in the category of in-hospital medical services in state fiscal year 2021. It is unknown what portion of that aggregated expenditure was attributed to uninsured patients, upon which to apply the 10% decrease. In this category, the agency is unable to provide a comparative analysis of the amount billed vs. the contractual amount allowed by PEHP insurance because those contract amounts are specific to the contracted hospital and are also proprietary and cannot be released by PEHP or by the service provider. However, PEHP was able to render an approximate estimate of 50% billed as a rough market rate for such services.

B) Local governments:

There will not be fiscal impact on local governments because this rule does not regulate local governments.

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

For the reasons provided in Box 5A above, one can only estimate that if an amount was estimable, that amount would be further divisible by the approximate 10,000 licensed medical providers in the state having fewer than 50 employees who also provide services to individuals that are uninsured, to individuals who are victims of violent crime and who also apply for and are approved for reparation benefits. However, it is important to note that regardless of all other circumstances, this rule amendment creates fairness and consistency for these service providers in that it applies the same agreed upon and contracted rate that the service providers have agreed to with PEHP insurance rather than a percentage of payment which is unilaterally determined by the agency.

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

For the reasons provided in Box 5A above, one can only estimate that if an amount was estimable, that amount would be further divisible by the approximate 10,000 licensed medical providers in the state (presumably) having more than 50 employees. While hospital emergency departments are prohibited from denying services to individuals on the basis of having insurance (ability to pay), that policy does not apply to other, nonemergency hospital services. In the case of in-hospital medical services, it is important to note that regardless of all other circumstances, this rule amendment creates fairness and consistency for these service providers as well in that it applies a payment rate at or above the agreed upon and contracted rate that the service providers have agreed to with PEHP insurance. This rate is above both Medicaid and Medicare rates, the two largest and most accepted government health care provider payment rates.

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

These changes would produce non-monetary benefits to Utah residents and visitors victimized by violent crime. These benefits would come from decreased confusion regarding payments and benefits by making them consistent with health care insurance practices. The changes may also create greater consistency in medical billing services and practices by eliminating different standards for the reparation program than standard insurance practices.

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

Considering that these rule amendments bring the state agency’s practices into greater consistency with the industry standard, if there are any changes in this area, it would be of savings rather than costs in that it would eliminate the need to continue using and separate billing process and practices exclusive to the 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 fiscal impacts of these amendments have been evaluated in great detail and in partnership with PEHP insurance and the Utah Office for Victims of Crime (UOVC) Board of Directors. The UOVC attempts to create and maintain a balanced sensitivity for Utah residents that have been impacted by violent crime and Utah’s private business, medical service providers who meet the urgent and critical needs they have. The UOVC understands both the critical needs of victims and the medical experts who serve them. As the UOVC head, I take significant pride in the balance these amendments strike in meeting the needs of all parties. From any perspective, these amendments are a win for the victim in facilitating easier processes and fostering partnerships with medical service providers who will be much more likely willing to treat victims of crime, including those without health insurance. The rule amendments create a win for service providers by assuring them a payment rate they have agreed to accept from one of Utah’s largest health insurance providers. The amendments also eliminate the need for
service providers to maintain a separate billing standard for this agency. The amendments create a win for the UOVC in that it aligns the UOVC with industry standards and practices and allows greater potential for automation and standardization of processes within the UOVC. Gary Scheller, 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 Director of the Utah Office of Victim of Crimes, Gary Scheller, 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.)

<table>
<thead>
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<th>A) Comments will be accepted until:</th>
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10. **This rule change MAY become effective on:** 12/22/2021

**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

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<th>Gary Scheller, Director</th>
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R270. Crime Victim Reparations, Administration.  
R270-1. Award and Reparation Standards.  
R270-1-1. Authority and Purpose.  
As provided in [Section]Subsection 63M-7-506(1)(c) the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

**R270-1-2. Definitions.**

(1) Terms used in this rule are found in Section 63M-7-502.

(2) In addition:

(a) "APRN" means Advanced Practice Registered Nurse;

(b) "DOPL" means Utah Department of Commerce, Division of Professional and Occupational Licensing;

(c) "medical forensic sexual assault examination" means a medical and forensic examination of a victim to provide medical care and collect forensic evidence in a sexual assault investigation or prosecution;

(d)(1) "medical services" means medical treatment or services described in Subsection 63M-7-511(4)(b) performed at an inpatient or outpatient medical facility by a licensed medical provider;

(d)(2) medical services include dental services;

(d)(3) medical services do not include sexual assault forensic examinations or mental health therapy;

(i) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(i) "primary victim" means a victim who has been directly injured by criminal conduct;

(i) "program" means the Victim Services Grant Program, authorized under [Section]Subsection 63M-7-506(l)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims; and

(i) "secondary victim" means a victim who is not a primary victim but who has a relationship with the victim and was traumatically affected by the criminally injurious conduct that occurred to the victim, including an immediate family member of a
victim such as a spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian or other person who the reparations officer reasonably determines bears an equally significant relationship to the primary victim.

R270-1-3. Funeral and Burial Reparations Award.

(1) Pursuant to Subsection 63M-7-511(4)(f), reparations award for funeral and burial expenses may not exceed $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

(2) Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

(3) Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:
   (a) Three days in-state
   (b) Five days out-of-state
   (4) When a victim dies leaving no identifying information, claims made by a provider cannot be considered.


(1) Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).
(2) Pursuant to Subsection 63M-7-502(9)(7), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-5. Counseling Awards.

(1) Pursuant to Subsections 63M-7-502(21)(a) and 63M-7-511(4)(c), reparations awards for out-of-pocket mental health counseling are subject to limitations as follows:
   (a) The reparation officer shall approve a standardized treatment plan.
   (b) The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.
   (c)(i) Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual group counseling sessions or $2,500 maximum mental health counseling award.
   (ii) Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.
   (d) [All other secondary] Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual group counseling sessions or $1,250 maximum mental health counseling award.
   (e) Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.
   (f) Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

(2) [In-patient] Inpatient hospitalization shall only be considered for primary victims when the treatment has been recommended by a licensed therapist in life-threatening situations. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. [All other secondary] Secondary victims of other crime types are excluded.

(3) Residential and day treatment shall only be considered for primary victims when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. [All residential] Residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. [All other secondary] Secondary victims of other crime types are excluded.

(4) Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

(5) The office shall not pay for treatment for an offender related to the perpetration of the criminally injurious conduct. Reparations officers shall establish a reasonable percentage regarding victimization treatment for outpatient, inpatient, residential and day treatment on a case by case basis upon review of the mental health treatment plan and treatment records.

(6) Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the DOPL, working under the supervision of a supervisor approved by the DOPL. Student interns otherwise eligible under Subsection 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency/institution, facility or agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

(7) Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

(8) The following maximum amounts shall be payable for mental health counseling:
   (a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;
   (b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;
NOTICES OF PROPOSED RULES

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an APRN, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The rates established in this section shall apply to individuals performing treatment, and not those supervising treatment.

9. Chemical dependency specific treatment will not be compensated unless the reparations officer determines that it is directly related to the crime. The board may review extenuating circumstance cases.

R270-1-6. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When award denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-7. Reparations Awards.

Pursuant to Section 63M-7-503, reparations awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the fund.


Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 Title 76, Chapter 7, Part 3, Abortion shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.


Pursuant to Section 63M-7-522, The office may make emergency reparations awards up to $1000 can be granted]. No time limit is required for filing an emergency reparations claim. Processing of emergency reparations claims is three to five days.

R270-1-10. Loss of Earnings.

1. Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

2. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The board may review extenuating circumstances on reparations claims involving loss of earnings [claims for the purpose of consideration and authorization of extensions beyond set limits.


1. Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $1,000. Board approval is needed where extenuating circumstances exist.

2. Transportation expenses up to $1,000 are allowed for crime-related traveling, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The board may approve travel expenses in excess of $1,000 where extenuating circumstances exist.

R270-1-12. Collateral Source.

1. Money from the fund shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

2. Money from the fund shall be used before money from the Utah Medical Assistance Program, established in Section 26-18-10, when considering allowable benefits for victims of violent crime.


1. Retention of the UOVC annual report and crime victim case files shall be as follows:

2. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

3. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to the Utah Department of Administrative Services, Division of Archives and Records Service. Case files will be retained in the State Records Center for 99 years and then destroyed.


1. Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the reparations officer shall pay the bills by the date of service. The reparations officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the reparations officer shall determine payment on a percentage basis.

2. Reparations awards may only be granted for costs the reparations officer determines are directly related to or resulting from criminally injurious conduct.


1. Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

2. The reparations officer may allow up to $5,000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5,000 where extenuating circumstances exist.

3. The reparations officer may allow up to $1,500 for other essential personal property not included in Subsection (2) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of $1,500 where extenuating circumstances exist.

R270-1-16. Subrogation.

1. Pursuant to Section 63M-7-519, monies collected from the perpetrator, insurance, etc. through subrogation will be placed in the fund and will not be credited toward a particular victim or claimant award amount.

73
(2) Pursuant to [Subsections]Subsection 63M-7-519(2), in such instances where a settlement against a [third party]a collateral source appears imminent, the director may reduce by up to 33% the lesser of: (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the board with the concurrence of the director.

R270-1-17. Unjust Enrichment.

Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering reparations claims involving possible unjust enrichment of an offender:

(1) Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

(2) [Awards] Reparations awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

(3) Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

(4) Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

(5) Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award [and/or] or if a substantial portion of it will be used to pay for [his] the offender's living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-18. Prescription or Over-the-Counter Medications.

(1) Reimbursement of prescription or over-the-counter medications [and/or] or medication management services used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

(2) Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

(3) Medication management rates shall be limited to a maximum of $62.50 per [thirty] 30 minute session.

(4)(a) The office shall pay the amount that would be paid by PEHP for prescription medications dispensed by a pharmacy, not including those included in R270-1-23.

(b) If PEHP does not have a fee schedule, the office will pay the amount the victim is obligated to pay that is not reimbursed by insurance.

R270-1-19. Peer Review Committee.

A volunteer Peer Review Committee may be established to review issues [and/or] provide input to office staff on reparations claims involving out[-]patient mental health counseling [claims]. The composition, duties, and responsibilities of this Committee shall be defined by the board by written internal policy and procedure.

R270-1-20. Medical Awards.

Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

(1) All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

(2) The reparations officer reserves the right to audit any and all billings associated with medical care.

(3) The reparations officer will not pay any interest, finance, or collection fees as part of the award.

(4)(i) If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, the office shall pay 60% of billed charges for eligible medical bills.

(ii) If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, the office shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

(iii) This rule does not apply to expenses governed by R270-1-5 or R270-1-22.

(5) This rule supersedes any other agreements regarding payment of medical bills by the office.

(6) Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available.

Pursuant to Subsections 63M-7-511(4), if the victim does not have any collateral source to pay for medical services the office may pay:

(1) the rate established by the PEHP fee schedule for medical services, or

(2) 50% of the billed charges for medical services if PEHP does not have a fee schedule established for a medical service.


Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death and/or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the reparations officers shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the reparations claim is based. Reparations officers shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

R270-1-22. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a reparations claim for benefits expires and no further payments will be made with regard to the reparations claim after three years have elapsed from the date of application with the office.

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
Reparations officers may extend reparations claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

[R270-1-23. Sexual Assault Forensic Examinations.]

Pursuant to Subsections 63M-7-502(20) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the office in the amount of up to $750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, the office may also pay for the cost of medication and/or pharmaceutical management and consultation provided for the purpose of obtaining free medications and 60% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed $250.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of providing a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

5. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

6. The office may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

7. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

8. The application or billing for the sexual assault forensic examination must be submitted to the office within one year of the examination.

9. The billing for the sexual assault forensic examination shall:
   (a) identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;
   (b) indicate the claim is for a sexual assault forensic examination; and  
   (c) itemize services and fees for services.

10. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before money in the fund is used. Pursuant to Subsection 63M-7-513(5), the director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

11. Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

12. Restitution for the cost of the sexual assault forensic examination may be pursued by the office.

13. Payment for sexual assault forensic examinations shall be considered for the following:

   (a) Fees for the collection of evidence, for forensic documentation only, to include:
       (i) history;  
       (ii) physical; and
       (iii) collection of specimens and wet mount for sperm.
   (b) Emergency department services to include:
       (i) emergency room, clinic room or office room fee;
       (ii) cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;
       (iii) serum blood test for pregnancy;
       (iv) medications administered to the patient at the time of services, including:
       (A) the morning after pill or high dose oral contraceptives for the prevention of pregnancy; and
       (B) treatment for the prevention of sexually transmitted disease up to four weeks.

14. The victim of a sexual assault that is requesting payment by the Office for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the office.

R270-1-23. Sexual Assault Forensic Examinations.

1. The office may pay a medical service provider who performs a medical forensic sexual assault examination:
   (a) up to $750, for a complete medical forensic sexual assault examination with photo documentation; and
   (b) the full cost of any medications the medical service provider gives directly to a victim during a medical forensic sexual assault examination such as:
       (i) the morning after pill or high dose oral contraceptives for the prevention of pregnancy; and
       (ii) medication for the treatment and prevention of sexually transmitted diseases.

2. The office may pay a medical facility where a medical forensic sexual assault examination is performed:
   (a) 50% of the fee for the use of an examination room to perform a medical forensic sexual assault examination up to a maximum payment of $350, and
   (b) the PEHP rate if one has been established or 50% of the fee for:
       (i) a history and physical;
       (ii) the collection of specimens and wet mount for sperm;
       (iii) testing for gonorrhea, chlamydia, trichomonas, and other sexually transmitted disease;
       (iv) a serum blood test for pregnancy; and
       (v) the testing and treatment of sexually transmitted diseases.

3. To be eligible for reimbursement of a medical forensic sexual assault examination the medical service provider who performed the sexual assault forensic examination shall:
   (a) report the medical forensic sexual assault examination to law enforcement; and
   (b) only collect evidence with the permission of the victim or the legal guardian of the victim.

4. A request for reimbursement of medical forensic sexual assault examination shall include:
   (a) the victim’s name, date of birth, or facility patient number;
   (b) a description of what services were provided; and
   (c) an itemization of the services provided; and
   (d) either:
       (i) the signature of a law enforcement officer, victim advocate or service provider; or
shall announce the availability of program funds for that year; approved by the board.

(6) A victim may not be:

(a) charged for a medical forensic sexual assault examination; or

(b) required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a medical forensic sexual assault examination.

(7) (a) The office may not provide any reimbursement for any costs associated with an over-the-counter sexual assault evidence kit which is made available to the public for at home collection of evidence.

(b) This subsection prohibits reimbursement for the cost of the kit and the cost of any testing performed on the kit.


(1) Pursuant to Subsection 63M-7-511(4)(g), [loss of support] reparations awards for loss of support shall only be covered on [death] reparations claims involving [death only].

(2) Except as provided in R270-1-24(3), reparations awards for loss of support are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

(3) The board may approve reparations awards for loss of support to persons who are not minor children, but were physically and financially dependent on the deceased victim.


(1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparations awards and associated administrative costs for the upcoming year.

(2) When the program is authorized, the board:

(a) shall determine the amount available for the program for that year;

(b) shall announce the availability of program funds through a request for proposals or other similar competitive process approved by the board; and

(c) may establish funding priorities and shall include any priorities in the announcement of funds.

(3) Requests for funding shall be submitted on a form approved by the board.

(4) The board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The board may award less than the amount determined in R270-1-25(4)(d)(2)(a). The decisions of the board may not be appealed.

(5) An award by the board shall not constitute a commitment for funding in future years. The board may limit funding for ongoing projects.

(6) Award recipients shall submit quarterly reports to the board on forms established by the director. The office staff shall monitor [all victim services grants and provide regular reports to the board.


Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in [the state of] Utah, may be considered for payment. [Since a reasonable and customary schedule of charges has not been established, the] reparations officer may require the following: The claimant shall submit a written itemized description of each procedure, function [and/or] activity performed; [and an explanation of its] the benefit to the victim; the location and time involved to perform such services; and [a summary of] the qualifications and experience which allows the service provider to perform the services. Services shall be requested reimbursed in lieu of traditional treatment methods. [Awards] Reparations awards for cultural services shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. [Claim will be denied if no healing benefit can be identified.]

R270-1-27. Requirements for Payment.

(1) Payments made by the office shall be directly related to the victimization.

(2) Services paid by the office shall be rendered and billed in the usual and customary course of business.

(3) The office reserves the right to audit the records of medical facilities and medical service providers who request reimbursement from the office.

(4) The office may not pay:

(a) interest, finance, or collection fees; or

(b) any costs associated with the collection and testing of evidence unless the collection is performed by a medical service provider and tested at a licensed medical facility.

(5)(a) If a victim has medical insurance or another collateral source to pay for services, the office may only pay up to the remaining portion of the bill that the victim is obligated to pay after all other collateral sources have paid.

(b) A reparations officer may waive the requirement in Subsection (5)(a) if:

(i) it appears likely that compliance would compromise a victim's;

(A) safety;

(B) quality or continuation of care; or

(C) access to services due to distance, lack or transportation or other relevant circumstances; or

(ii) there are financial or practical circumstances which constitute a reasonable basis for a waiver.

KEY: victim compensation, victims of crimes

Date of Last Change: 2021 [June 7, 2012]

Notice of Continuation: March 16, 2021

Authorizing, and Implemented or Interpreted Law: Title 63M, Chapter 7, Part 5
Owned Upper Payment Limit (NF NSGO UPL) program.

There is no impact on small businesses as this reenactment does not affect previous funding for the QI program.

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 reenactment does not affect previous funding for the QI program.

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

There is no impact on Medicaid providers and Medicaid members as this reenactment does not affect previous funding for the QI program.

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

There are no compliance costs as this reenactment does not affect previous funding for the QI program.

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 this change does not previous funding for the QI program.

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.)

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>FY2022</th>
<th>FY2023</th>
<th>FY2024</th>
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<tr>
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<tr>
<td>Local Governments</td>
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<td>$0</td>
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</tr>
<tr>
<td>Small Businesses</td>
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<tr>
<td><strong>Fiscal Benefits</strong></td>
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<tr>
<td>State Government</td>
<td>$0</td>
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</tbody>
</table>
This rule applies only to nursing facility providers who are Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) Quality Improvement (QI) program within the Nursing Care Facility Program. This rule defines the participation requirements for the QI program. A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

| 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
Net Fiscal Benefits    $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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021
   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: 11/01/2021


R414-516-1. Introduction and Authority.
This rule defines the participation requirements for the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule applies only to nursing facility providers who are part of a contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.

The definitions in Rule R414-505 apply to this rule. In addition:
(1) "American Health Care Association (AHCA)" means the national association of long-term and post-acute providers for quality care and services for frail, elderly, and disabled Americans.
(2) "Certification And Survey Provider Enhanced Reports (CASPERS)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.
(3) "Certified Nurse Aid (CNA)" means any person who completes a nurse aid training and competency evaluation program (NATCEP) and passes the state certification examination.
(4) "Division" means the Division of Medicaid and Health Financing (DMHF).
(5) "Eden Certification" means a program achieving Eden Milestones as approved by the Eden Alternative organization.
(6) "Fair Rental Value (FRV)" means the definition provided in Attachment 4.19-D of the Medicaid State Plan.
(7) "FIVE-Star Quality Rating System" means a rating system developed by CMS to help consumers, their families, and other caregivers compare health inspection reports, staffing, and quality measures (QMs) between nursing programs.
(8) "Nurse" means an individual who is licensed under Title 58, Chapter 31b as:
   (a) a licensed practical nurse (LPN);
   (b) a registered nurse (RN);
   (c) an advanced practice registered nurse (APRN); or
   (d) a nurse practitioner (NP).
(9) "Program" means each distinct NF program participating in the NF NSGO UPL program.
(10) "Qualified Activity Professional" means:
   (a) a qualified therapeutic recreation specialist or an activities professional who is licensed or registered in the state of Utah;
   (b) an activities professional who is recognized by an accrediting body;
   (c) a person who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a therapeutic activities program;
   (d) an occupational therapist (OT); or
   (e) an occupational therapy assistant (OTA).
(11) "Qualified Clinician" means:
   (a) a physician;
   (b) a surgeon;
   (c) a chiropractic physician;
   (d) a physician assistant;
   (e) a physical therapist;
   (f) a physical therapist assistant;
   (g) an OT; or
   (h) an OTA.
(12) "Resident" means a Utah Medicaid eligible individual who resides in and receives nursing facility services in a Utah Medicaid-certified nursing facility.

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:
(a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Section R414-516-6;  
(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Section R414-516-6;  
(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Section R414-516-6.  
(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Section R414-516-6.  
(3) When calculating compliance under Section R414-516-6, a program shall not count residents who are in the facility less than 14 days.  
(4)(a) Each program shall submit to the Division a compliance form, using the current Division form, on or before January 31 following the end of the calendar year, documenting that the program qualifies to earn points under the selected QI program categories.  
(b) A compliance form must be mailed or electronically mailed to the correct address found at https://health.utah.gov/plan/longtermcareqf.htm.  
(c) In all cases, no additional compliance forms, documentation, unless requested as part of an audit, or explanation will be accepted if submitted after the annual submission deadline.  
(d) Any program that does not submit its compliance form by the deadline shall receive zero points for that program year.  
(5) The Division does not require a provider that enters the NF NSGU UPL program for only part of a calendar year, based on provider participation start date, to comply with the QI provisions of Section R414-516-5.1 in the first program calendar year.  

(1) A program may earn QI points through achieving the following quality awards, certifications, and ratings:  
(2) The AHCA National Quality Award;  
(a) A program that has earned the Gold AHCA quality award may earn six QI points for the duration of the award;  
(b) A program that has earned the Silver AHCA quality award may earn four QI points for the duration of the award;  
(c) A program that has earned the Bronze AHCA quality award may earn two QI points for the duration of the award.  
(3) The HealthInsight Quality Award;  
(a) A program that has earned a HealthInsight Quality Award may earn two QI points for the year awarded.  
(b) A program that achieves an Eden Certification Milestone at the time of implementation of this rule may receive QI points in the same formula for a program achieving the initial milestone;  
(1) Eden Certification Milestones; and  
(a) A program may earn one QI point by providing a menu option of at least five meal choices outside of the planned meal;  
(ii) The program may earn one QI point by providing a menu option of at least five meat choices outside of the planned meal;  
(iii) The program may earn three QI points by providing a five-meal program for the entire calendar year; or  
(iv) The program may earn one QI point by providing a four-meal program for the entire calendar year.  
(2) The program may earn two QI points through a preferred-snack program that shows 80% compliance in providing resident preferences.  
(a) The program shall provide a snack survey that includes fixed and beverage options, snack-time options, the date of the survey, and the name of the person who completes the survey.  
(b) The program shall complete the survey within two weeks of the admission date.  
(c) The program shall provide the snack and beverage at each resident’s preferred time.  
(d) If a resident requires feeding assistance, the facility shall provide a dining assistant during the snack.  
(e) The program shall complete a snack survey quarterly for each resident or as requested by the resident.  
(f) The program shall calculate compliance by dividing the number of residents who complete a preferred snack survey (numerator) by the number of residents during the quarter, who desired to complete a snack survey (denominator).  
(3) The program may earn two QI points through a preferred-bedtime program that shows 80% compliance in providing resident preferences for bedtime.  
(a) The program shall provide a bedtime survey, in which the resident is asked about preferred bedtime options and preferred rituals. The
program must include the date of the survey and the name of the person who completes it.

(b) The program shall complete the survey within two weeks of the admission date.

(c) The program shall provide each resident the resident’s preferred bedtime options and preferred rituals.

(d) The program shall complete a bedtime survey annually or as requested by the resident.

(e) The program shall calculate compliance by dividing the number of residents who complete a bedtime survey (numerator) by the number of residents during the calendar year, subtracted by the residents who declined to complete a bedtime survey (denominator).

(f) The program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents that show 80% compliance in providing consistent CNA or nursing staff assignments. The program may earn points by providing the same CNA or nurse for a resident for 32 waking hours during a standard Sunday through Saturday week.

(a) The program may earn one QI point for having a staffing schedule that provides consistent CNAs and nursing for the entire program.

(b) The program may earn one QI point by providing consistent CNA assignment to a distinct hall containing at least 10 residents.

(c) The program may earn two QI points by providing consistent CNA assignment to an entire program.

(d) The program may earn one QI point by providing consistent nurse assignment to a hall that contains at least 10 residents.

(e) The program may earn two QI points by providing consistent nurse assignment to an entire program.

(f) The program shall provide the consistent CNA or nursing staff assignment for 40 of 52 weeks during the calendar year.

(g) The program shall document compliance by dividing the number of residents who receive consistent CNA or nursing staff assignment in the hall or program (numerator) by the number of residents during the calendar year in the hall or program (denominator).

(h) The program may earn four QI points by providing a range of motion (ROM) program semi-annually to residents through a qualified clinician or may earn two QI points by providing a ROM program semi-annually to residents through a restorative nurse aid under the direct supervision of a qualified clinician. The program must show 80% compliance to a ROM program.

(i) The program shall include a ROM assessment, completed by a qualified clinician, for passive range of motion (PROM) or active range of motion (AROM) for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of any joint with a limitation, the reduced anatomic motion to the joint, how the restriction limits function, the job title and name of the person who completes the plan of care (POC), and the date of the POC.

(j) If the clinician finds a reduction in ROM and recommends a ROM POC, the POC must include:

(i) a goal to return the resident to the highest practicable level of function;

(ii) the frequency and duration of the POC;

(iii) the title and name of the qualified clinician or restorative nurse aid who completes the POC; and

(iv) the date of the POC.

(k) If a qualified clinician develops a POC for a resident, a qualified clinician or restorative nurse aid shall complete the POC under the supervision of a qualified clinician.

(l) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

(m) The program shall calculate compliance by dividing the number of residents who receive a ROM assessment semi-annually plus the number of residents who refuse to complete a ROM assessment semi-annually (sum is numerator) by the number of residents during the calendar year (denominator).

(n) The program may earn up to four QI points by providing a one-on-one activity program. The one-on-one activity program shall provide at least a 30 minute individual activity onsite or within the community each month for each resident.

(o) The program may earn one QI point by providing a schedule for one-on-one activity participation for residents who desire to participate.

(p) The program may earn three QI points if it provides one-on-one activities.

(q) A qualified activity professional shall complete an activity interest (AI) survey for each resident that includes recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and job title of the person who completes the survey and the date the survey is completed.

(r) The following provisions are required to each resident who desires to participate in a one-on-one activity program:

(a) A qualified activity professional shall develop a POC that includes the preferred list of activities and a method of ranking the importance of the activities to the resident. The activity POC must include:

(i) the activities to be completed during the one-on-one activity;

(ii) the goal of the activity;

(iii) what the activity is promoting;

(iv) the date the POC was completed; and

(v) the job title and name of the person who completes the POC.

(b) The person who completes the activity with the resident shall document:

(i) the preferred activity completed;

(ii) the duration of the activity;

(iii) the goal of the activity;

(iv) which quality of life measures were promoted; and

(v) any relevant comments made by the resident.

(c) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

(d) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the program shall document the refusal.

(e) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident, and offer the one-on-one activity program annually.

(f) If a resident initially refuses to participate in the one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

(g) The program shall calculate compliance by adding the number of residents who participated in but declined a monthly one-on-one activity, the number of residents who completed the program, and the number of residents who declined to complete the program (distinct sum is numerator) divided by the number of residents during the calendar year (denominator).

(h) The program may earn four QI points by providing a mobility program to qualifying residents that shows 80% compliance in a mobility program. The program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during the calendar year.

(i) A nurse or qualified clinician shall complete Section GG0170 Mobility of the Minimum Data Set Version 3.0 for each resident.

(j) A resident who achieves a score of 0.4, 0.5, or 0.6 on sections D and J qualifies to participate in a walking program.

(k) The nurse or qualified clinician who completes the mobility section shall establish a POC for the walking program to determine:
(i) A program may earn up to six QI points for demonstrating quality metric scores equal to or better than the industry average noted.
(ii) The program must earn the number of QI points not achieved from that calendar year's data period.

(a) The industry average used to calculate the QI points for Subsections R414-516-7(b) and (c) are determined in accordance with the following data:
(i) CMS 5-Star quality measures rating for long-stay residents obtained from CMS online data sources. The industry average is 3.62. To qualify, the program must equal or exceed the industry average.
(ii) CASPER Quality Measures for urinary tract infections obtained from CMS online data sources. The industry average is 6.68%. To qualify, the program must be less than or equal to the industry average.

(b) The program must have less than or equal to the industry average.

(1) A program that does not earn the minimum required QI points during a calendar year shall:
(a) earn the number of QI points not achieved from that calendar year in addition to the required QI points the subsequent calendar year;
(b) submit to the Division a plan of correction that details how the program will come into compliance with the QI Program.
(c) The program must mail electronically a plan of correction to the correct address found at https://health.utah.gov/stplan/longtermcarefqi.htm.

(2) The Division shall remove from the UPL Seed Contract, a program that fails to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.
(a) Once the Division determines that the program failed to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.
(b) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.
(c) If the program does not file an appeal or the Division upholds its determination, the Division shall amend the UPL Seed contract to remove the program effective the last day of the quarter in which the determination is made.
(d) If a program that has been removed from the UPL Seed Contract desires to be added back to the contract prospectively, the program shall demonstrate compliance in accordance with Subsection R414-516-8.
R414-516-3(1)(c) for one full year. "trial period", after the effective date of the removal.

(a) The program shall submit the following to the Division within 30 days of the trial period:

(i) the current compliance form completed; and

(ii) documentation of compliance with all QI programs in which points were earned.

(b) If the Division determines that the program was compliant during the trial period, the Division may include the program in the UPL Seed Contract effective the first day of the quarter following the date compliance was determined.

(4) The Division may audit a program at any time to ensure compliance.

(a) The Division shall provide notice that indicates the period of the audit and the QI programs being audited.

(b) When an audit is performed, all documentation requested by the Division shall be postmarked or demonstrate proof of delivery to the Division within 30 calendar days of the request.

(c) Failure to submit the requested documentation within 30 calendar days, shall result in the program forfeiting the QI points for the specific QI program category being audited.

(d) Audit results shall supersede the program's reported QI points.

(e) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

R414-516-1. Introduction and Authority.

This rule defines participation requirements for the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule applies only to nursing facility providers who are part of a contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.


The definitions in Rule R414-505 apply to this rule. The following definitions also apply.

(1) "Certification and survey provider enhanced reports (CASPER)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.

(2) "Program" means the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program.

(3) "Resident" means a Medicaid patient who resides in and receives nursing facility services in a Medicaid-certified nursing facility.

(4) "Seed contract" means a contract between the Division of Medicaid and Health Financing (DMHF) and a non-state government entity to participate in the upper payment limit program.

(5) "State licensing" means the entity assigned to regulate health care facilities.


(1) A program is required:

(a) to score better than the national average;

(b) improve from the prior state fiscal year (SFY); or

(c) not receive a state survey deficiency of F, H, I, J, K, or L in six of nine metrics.

(2) The metrics and state survey used for the QI Program are in accordance with the following data:

(a) CASPER percentage of long-stay residents assessed and appropriately given the seasonal influenza vaccine;

(b) CASPER percentage of long-stay residents with a urinary tract infection;

(c) CASPER percentage of high-risk long-stay residents with pressure ulcers;

(d) CASPER percentage of long-stay residents experiencing one or more falls with major injury;

(e) CASPER percentage of long-stay residents who lose too much weight;

(f) CASPER percentage of long-stay residents who receive an antipsychotic medication;

(g) CASPER percentage of long-stay residents whose ability to move independently worsens;

(h) adjusted nursing staff hours per resident per day; and

(i) a state survey without a quality of care deficiency of F, H, I, J, K, or L.

(2) The metrics and state survey used for the QI Program are in accordance with the following data:

(a) CASPER percentage of long-stay residents assessed and appropriately given the seasonal influenza vaccine;

(b) CASPER percentage of long-stay residents with a urinary tract infection;

(c) CASPER percentage of high-risk long-stay residents with pressure ulcers;

(d) CASPER percentage of long-stay residents experiencing one or more falls with major injury;

(e) CASPER percentage of long-stay residents who lose too much weight;

(f) CASPER percentage of long-stay residents who receive an antipsychotic medication;

(g) CASPER percentage of long-stay residents whose ability to move independently worsens;

(h) adjusted nursing staff hours per resident per day; and

(i) a state survey without a quality of care deficiency of F, H, I, J, K, or L.

(3) If state licensing does not conduct a survey for a program in a given SFY, then the survey requirement described in (1)(i) of this section is removed from consideration, and the facility must meet five of eight metrics.

(4) If more than one survey is completed during the QI SFY, then all surveys are used for the period.

(5) The source of data used to calculate compliance comes from the CMS website, except for data described in Subsection R414-516-3(1)(i), which comes from state licensing. The data that represent the SFY are used for the analysis. Each program provides data to CMS for nursing hours and CASPER. The data is then made available in the subsequent SFY and will be downloaded by DMHF.

(6) DMHF does not require a provider that enters the NF NSGO UPL program for only part of an SFY, based on provider participation start date, to comply with the QI requirements described in Subsection (1) in the first SFY.

R414-516-4. Exceptions and Holdings.

(1) DMHF shall notify a program when it does not meet the requirements of Subsection R414-516-3(1), and place the program on probation during the subsequent SFY.

(2) The program must email to qiupl@utah.gov, a detailed description of why the facility did not comply with the requirements within 30 calendar days of receiving notice, and must send a corrective action plan detailing how the facility will comply in the subsequent SFY.

(3) If the program fails to comply with Subsection R414-516-3(1) for a second consecutive SFY, DMHF shall send the program a notice of failure to meet the requirements and shall remove the program from the seed contract.

(a) The program may submit within 30 days of receiving notice, a written request to remain in the seed contract, which contains evidence showing extraordinary circumstances that reasonably prevented the program from demonstrating compliance. Based on the evidence, DMHF may determine the program has provided sufficient documentation to meet its burden of proof and waive program removal from the seed contract.

(b) Effective the last day of the quarter in which DMHF determines non-compliance, DMHF shall remove the program from the seed contract, and the program may not receive payments for at least 12 months.

(c) If DMHF determines the program has complied with Subsection R414-516-3(1) for an entire subsequent SFY, DMHF shall amend the seed contract and reinstate the program effective the first day of the quarter after the determination is made.
NOTICE OF PROPOSED RULE

TYPE OF RULE: New

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<tr>
<th>Utah Admin. Code Ref (R no.):</th>
<th>Filing ID</th>
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</thead>
<tbody>
<tr>
<td>R414-523</td>
<td>54079</td>
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</tbody>
</table>

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

General Information

2. Rule or section catchline:
   R414-523. Extraordinary Care Definition for Spousal Caregiver Compensation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
   The purpose of this new rule, in accordance with S.B. 63 passed in the 2021 General Session, is to implement a definition for extraordinary care to use in the evaluation and authorization of caregiver compensation in applicable home and community-based services (HCBS) waiver programs.

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 definition for extraordinary care to use in the evaluation and authorization of caregiver compensation in applicable HCBS programs. It also specifies limitations, spells out eligibility requirements, lists provisions for compensation, and specifies the Department of Health's authority to deny a compensation request.

Fiscal Information

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

   A) State budget:
   There is an annual cost of $4,127,800 to implement caregiver compensation within applicable HCBS programs.

   B) Local governments:
   There is no impact on local governments because they neither fund nor provide HCBS 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 rule only compensates caregivers in the home who provide extraordinary care for their spouses.

   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 rule only compensates caregivers in the home who provide extraordinary care for their spouses.

   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):
   About 360 spouses who meet the eligibility requirements to provide extraordinary care in the home may each receive about $11,466 in compensation based on the total amount of $4,127,800.

   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 as this rule can only result in out-of-pocket savings for spouses who qualify to provide extraordinary care in the home.

   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 this rule only provides compensation for caregivers who provide extraordinary care in the home. 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.)
Regulatory Impact Table

<table>
<thead>
<tr>
<th>Fiscal Cost</th>
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<th>FY2023</th>
<th>FY2024</th>
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<td>Small Businesses</td>
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<tr>
<td>Total Fiscal Cost</td>
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Fiscal Benefits

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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 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 | Section 26-18-424

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: 12/15/2021

10. This rule change may become effective on: 12/22/2021

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: 11/01/2021

R414-523. Extraordinary Care Definition for Spousal Caregiver Compensation.
R414-523-1. Introduction and Authority.
This rule implements a definition for extraordinary care to use in the evaluation and authorization of caregiver compensation in applicable home and community-based services waiver programs. This rule is authorized by Section 26-18-424.

(1) "Care planning team" means the case manager or support coordinator selected or assigned to the participant and includes other individuals based on the participant's preference who help determine the support a participant receives.
(2) "HCBS waiver" means a home and community-based waiver program authorized under Section 1915(c) of the Social Security Act.
(3) "Participant" means a participant in the HCBS Waiver who is enrolled in the applicable program and for whom usage of caregiver compensation is evaluated.

Extraordinary care means care that exceeds the range of activities of daily living (ADLs) or instrumental activities of daily living (IADLs) that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which is necessary to assure the health and welfare of the participant and avoid institutionalization. Extraordinary care may include specialized skills and tasks that the individual needs to perform for the waiver participant.

R414-523-4. Eligibility for Spousal Caregiver Compensation.
(1) A spouse may be eligible to perform direct care if:
(a) the spouse is the choice of the participant and supported by the care planning team;
(b) the spouse is not directing services on behalf of the participant;
(c) the spouse agrees to provide no more than what is approved, limited, and established in the participant's care or service plan; and
(d) the spouse can meet the needs of the participant. For example, the spouse has specialized training such as nursing licensure or is determined able by the Department to meet the participant's health and safety needs.
R414-523-5. Limitations.
   (1) The availability of spousal caregiver compensation is restricted to HCBS waiver programs, and if part of the state's approved waiver implementation plan.
   (2) This rule does not pertain to the evaluation and authorization of caregiver compensation for parents of minor children or guardians or when a guardian is not the spouse of a participant.

   (1) During initial and subsequent care planning meetings, the participant's case manager or support coordinator reviews the authorization for caregiver compensation to determine whether:
      (a) the choice of the spouse to provide waiver services reflects the participant's wishes and desires;
      (b) the provision of services is in the participant's and family's best interests;
      (c) the provision of services is appropriate and based on the participant's identified needs; and
      (d) the services will increase the participant's independence and community integration.
   (2) The Department shall deny the request for spousal caregiver compensation if the caregiver does not meet any of the conditions in Subsection (1).
   (3) The participant may appeal the Department's denial in accordance with the hearing rights described under Rule R410-14.

KEY: Medicaid
Date of Last Change: 2021
Authorizing and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-424
None—Small businesses will not receive or be required to expend any funds as a result of the amendment because they are not eligible to participate in the program.

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

None—Non-small businesses will not receive or be required to expend any funds as a result of the amendment because the program is voluntary for the rural hospitals that employ the physicians. If an eligible rural hospital chooses to participate in the program, the amount paid by the hospital to the physician will increase by $5,000 (i.e., from $15,000 to $20,000), since the rural hospital is required to match the state’s award funding on a 1:1 basis.

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):

Physicians employed by a rural hospital that participate in the program will receive an increased benefit of $10,000. The $5,000 increase in the award amount paid by the state will be matched 1:1 by the employing hospital, for a total benefit to participating physicians of $10,000.

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

None—Participation in the program is voluntary for physicians and the employing rural hospitals.

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 non-small businesses (i.e., rural hospitals that choose to participate in the program) will be outweighed by the increased award amount paid to physicians employed by the rural hospitals. The proposed amendment will result in a net fiscal benefit of $65,000.

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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</tr>
<tr>
<td>Local Governments</td>
</tr>
<tr>
<td>Small Businesses</td>
</tr>
</tbody>
</table>

Non-Small Businesses | $65,000 | $0 | $0 |
| Other Persons | $0 | $0 | $0 |

Total Fiscal Cost | $65,000 | $0 | $0 |

Fiscal Benefits

| State Government | $0 | $0 | $0 |
| Local Governments | $0 | $0 | $0 |
| Small Businesses | $0 | $0 | $0 |

Non-Small Businesses | $0 | $0 | $0 |
| Other Persons | $130,000 | $0 | $0 |

Total Fiscal Benefits | $130,000 | $0 | $0 |

Net Fiscal Benefits | $65,000 | $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:

Title 26, Chapter 46a

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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.
R434-45. Rural Physician Loan Repayment Program[Rules].

R434-45-1. Purpose.

This rule implements [the Rural Physician Loan Repayment Program, Utah Code...Title 26, Chapter 46a Rural Physician Loan Repayment Program] which governs the award of funds to rural physicians to repay eligible bona fide loans taken for educational expenses.


This rule is required by Subsection 26-46a-103(6)(a) and is promulgated under the authority of Sections 26-1-5 and 26-1-17.


The definitions as they appear in Section 26-46a-102 apply. In addition:

(1) "Applicant" means a physician who submits a completed application and meets the application requirements established by the Department for loan repayment, including a written agreement with a rural hospital to provide matching funds.

(2) "Approved rural hospital" means a hospital located in a rural county as defined by Section 26-46a-102, who has entered into a written agreement with the recipient to provide matching funds for the program.

(3) "Committee" means the Rural Physician Loan Repayment Program Advisory Committee created by Section 26-46a-104.

(4) "Contract year" means a 12 month period beginning with the effective date of the contract between the recipient and the approved rural hospital.

(5) "Educational expenses" means the cost of allopathic or osteopathic medical education, including books, equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(6) "Eligible bona fide loan" means a loan used to pay for educational expenses leading to an allopathic or osteopathic medical degree and license in Utah that is:

(a) [A] a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) [A] a governmental loan made by a federal, state, county or city agency;

(c) [A] loan made by another person that is documented by a contract notarized at the time of making of the loan, indicative of an arm's length transaction, and with competitive terms and rates as other loans available to students; or

(d) [A] loan that the application conclusively demonstrates to the Department is a bona fide loan.

(7) "Loan repayment contract" means a contract for funds to defray educational loans in exchange for a service obligation at an approved site.

(8) "Recipient" means an applicant selected to receive a loan repayment.

(9) "Service obligation" means the required professional services rendered under a loan repayment contract at an approved site for a minimum of two years.

R434-45-4. Loan Repayment Contract Administration.

(1) The Department may enter into education loan repayment contracts with physicians, in accordance with Subsection 26-46a-103(2).

(2) The Department may award loan repayment contracts up to $45,200,000 per contract year per physician.

(3) The Department may pay a recipient at the end of the first quarter of the contract year.

(4) The Department may not enter into a loan repayment contract with an applicant who is in default of any scholarship or loan repayment program at the time of application.

(5) Recipient shall enter into a written loan repayment contract with the Department and the approved rural hospital that binds them to the terms of the program before receiving Department funds.

(6) The approved rural hospital shall provide a copy of the contract with a recipient to the Department showing evidence of the payment method used by the rural hospital to match funds.

(7) Recipient shall have and maintain a permanent, unrestricted license to practice as a physician in Utah before the first day of service under the contract and during the service obligation.

(8) Recipient shall provide a progress report as defined by the Department from the hospital on a biannual basis to the Department.

(9) Recipient shall provide information reasonably necessary for administration of the program, as determined by the Department.

(10) Recipient may not enter into any other similar contract for loan repayment until recipient satisfies the service obligation of the loan repayment contract.


(1) Loan repayment contract amount is based on the level of full-time equivalency of the recipient.

(2) A recipient may work full-time or part-time.

(3) As used in this rule:

(a) [F]ull-time means providing services for at least 40 hours per week for forty-seven (47) weeks per year; or

(b) [P]art-time means providing services for at least 20 hours per week for 47 weeks per year.


(1) Applicants shall be selected based on eligibility criteria, such as:

(a) [R]prior experience living, working, or both in a rural community;

(b) [H]ospital certification or eligibility;

(c) [T]he applicant obtaining a contract with an approved rural hospital that will match the loan funds;

(d) [S]tatus as a United States Citizen or legal resident; and

(e) [A]pplication submitted within one year [18 months] of beginning professional practice in a rural community.


(1) Recipient shall enter into written loan repayment contracts with the Department and the approved rural hospital agreeing to the conditions upon which the award is to be made before receipt of award under the act.

(2) The contract shall include conditions necessary to carry out the purposes of the act.

(3) Recipient shall serve at a rural site, approved by the Department, for a period established at the time of award, no less than 24 months.
(4) Periods of internship, preceptorship, or other clinical training may not satisfy service obligation.

(1) If a recipient fails to complete the service obligation, [he]the recipient shall:
   (a) [P]ay a penalty twice the total amount of the award, on a prorated basis, according to a schedule established by the loan repayment contract;
   (b) [P]ay 12% annual interest on the unpaid penalty; and
   (c) [P]ay all costs and expenses incurred, including attorney fees, in collection of penalty.
   (2) If a recipient is in breach of contract, [he]the recipient shall begin to repay within 30 days of breach.
   (3) If a recipient does not begin to repay within 30 days, the Department may submit for immediate collection of the total amount of the penalty.
   (4) A [R]recipient shall repay the penalty in no less than one year of breach of contract.
   (5) A [R]recipient shall make quarterly payments, no less than one-fourth of the total amount of the penalty.
   (6) The total amount of the penalty shall be determined from the end of the month in which breach of contract was made.
   (7) Recovered funds and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.

(1) The Department may extend the service obligation period for one year if:
   (a) a [R]recipient has completed [his]the first year of service under a two-year contract;
   (b) the [R]approved rural hospital will continue to match the Department funds; and
   (c) a [R]recipient informs the Department and rural hospital, in writing, of [his]the recipient's interest in extending the contract at least six months prior to the end of the service obligation.

R434-45-10. Release of Recipient from Loan Repayment Contract and Service Obligations.  
(1) The Department and the rural hospital may cancel or release, in full or in part, a recipient from [his]the service obligation if:
   (a) [T]he service obligation has been fulfilled;
   (b) [T]he recipient is unable to fulfill the service obligation due to permanent disability, preventing [him]the recipient from performing any work as a physician for remuneration or profit;
   (c) [T]he recipient dies; or
   (d) [G]ood cause is shown, as determined by the Department and the approved rural hospital.

KEY: rural, physicians, loan repayments, hospitals
Date of Last Change: 2021 [November 23, 2018]
Notice of Continuation: July 6, 2020
Authorizing, and Implemented or Interpreted Law: 26-46a
C) Small businesses ("small business" means a business employing 1-49 persons):

None—Small businesses will not receive or be required to expend any funds as a result of the amendment because they are not eligible to participate in the program.

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

None—Non-small businesses will not receive or be required to expend any funds as a result of the amendment because they are not eligible to participate in the program.

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

None—Participation in the program is voluntary.

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

None—Participation in the program is voluntary.

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

There is no fiscal impact to business because businesses will not receive or be required to expend any funds as a result of the amendment. 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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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:

Title 26, Chapter 47

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: 10/15/2021
R434-50. Assistance for People with Bleeding Disorders.

R434-50-1. Authority and Purpose.

This rule is required by and implements Section 26-47-103[(5) 26-47-103(1)(b)(i)(D) of the Health Care Assistance Act, Title 26, Chapter 47, Utah Code. It implements Section 103 of the Health Care Assistance Act, Title 26, Chapter 47, Federal Code.


An applicant [responding to a request applying for a grant under this rule] shall submit an application as directed in the grant application guidance issued by the Department.


The Department shall consider:

1. the extent to which the applicant:
   a. demonstrates that it will provide assistance to the greatest number of persons with bleeding disorders residing across the state of Utah;
   b. utilizes other sources of funding, including private funding, to provide bleeding disorder services; and
   c. provides:
      i. information that meets the requirements established in Subsection 26-47-103[(3) 26-47-103(1)(b)(iii)(D) of the Health Care Assistance Act, Title 26, Chapter 47, Federal Code;
      ii. a description of the individuals to be served by the grant;
      iii. the estimated number of individuals to be served with the grant award; and
      iv. the results of an assessment of need demonstrating the need for the bleeding disorder services that the grantee proposes to provide;
   2. the cost to the person with a bleeding disorder for the bleeding disorder services;
   3. the degree to which the applicant meets the requirements of the statute; and
   4. the degree to which the application is feasible, clearly described, and ready to be implemented.

R434-50-5. Qualified Service Recipients.

1. As required by Subsection 26-47-103[(3) 26-47-103(1)(b)(iii)(D) of the Health Care Assistance Act, Title 26, Chapter 47, Federal Code, the Department establishes that to meet the definition of a person with a bleeding disorder, the individual's premiums for private health insurance coverage, or cost sharing under private coverage, must be at or greater than 7.5%[-percent] of the individual's adjusted gross income.

2. The grantee must assure that each individual to whom it provides service under a grant awarded under this rule meets the requirements of this rule and Subsection 26-47-103[(1) 26-47-103(1)(b) of the Health Care Assistance Act, Title 26, Chapter 47, Federal Code.

KEY: bleeding disorders, grants

Date of Last Change: [March 1, 2021]

Notice of Continuation: October 28, 2020

Authorizing, and Implemented or Interpreted Law: 26-47-103(5)(a)
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no fiscal impact to small businesses because the requirements listed in this new rule are the same as the ones that previously existed in Rule R357-20.

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

There is no fiscal impact to non-small businesses because the requirements listed in this new rule are the same as the ones that previously existed in Rule R357-20.

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 fiscal impact because the requirements listed in this new rule are the same as the ones that previously existed in Rule R357-20.

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 because the requirements listed in this new rule are the same as the ones that previously existed in Rule R357-20.

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 Cultural and Community Engagement, has reviewed this rule and agrees that this rule will not have a fiscal impact on businesses. Jill Love, 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 Cultural and Community Engagement, Jill Love, 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            | 9-22-1(114) |

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: | Katherine Potter, Deputy Director | Date: 11/03/2021 |
NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R527-800  Filing ID 54015

Agency Information
1. Department: Human Services
   Agency: Recovery Services
   Street address: 515 E 100 S
   City, state and zip: Salt Lake City, UT 84102-4211
   Mailing address: PO Box 45033
   City, state and zip: Salt Lake City, UT 84145-0033
   Contact person(s):
   Name: Scott Weight  Phone: 801-741-7435
   Email: Sweigh2@utah.gov
   Name: Casey Cole  Phone: 801-741-7523
   Email: cacole@utah.gov
   Name: Jonah Shaw  Phone: 801-538-4225
   Email: jshaw@utah.gov

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

General Information
2. Rule or section catchline:
R527-800. Acquisition of Real Property, and Medical Support Cooperation Requirements

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 repealed as the result of the review of this rule against the current edition of the Administrative Rules' Rulewriting Manual. The Office of Recovery Services (ORS) does not currently pursue actions to acquire real property to satisfy financial obligations, as outlined in Sections R527-800-1 through R527-800-4. Section R527-800-5 Sanction, Medical Support, TPL, Paternity is being added to Rule R527-39 Applicant/Recipient Cooperation. This rule, therefore, becomes obsolete and in no longer needed.

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.

R459. Cultural and Community Engagement, STEM Action Center.
R459-1. Education Computing Partnerships.
R459-1-1. Authority.
   (1) Subsection 9-22-1(114) requires the STEM Action Center in consultation with the Utah State Board of Education to make rules for the administration of the grant program and awarding of grants; and to define outcome-based measures appropriate to the type of grant awarded.

   (1) This rule adopts the definitions found in Section 9-22-1.
   (2) "USBE" means Utah State Board of Education.

   (1) The STEM Action Center, in consultation with the USBE, will define the following grant parameters for each application cycle:
      (a) maximum award amount;
      (b) applicant eligibility criteria, which may include Local Education Agencies and individual schools;
      (c) allowed and disallowed costs;
      (d) grant duration, i.e., one year vs. multiple years;
      (e) type of grant, such as pilot vs. scale and replication; and
      (f) any other details necessary to manage the grant process.
   (2) The number of awards in each grant cycle may vary.
   (3) Applicant eligibility criteria and grant parameters will be posted in the applications for that grant cycle.
   (4) The review committee, with the organizational representation defined in Section 9-22-1, shall consist of four K-16 education representatives, with equal representation from elementary and secondary, two higher education representatives, one USBE representative, one Talent Ready Utah representative and three industry representatives. The STEM Action Center, in consultation with USBE, shall select the representatives for the review committee.
   (5) The STEM Action Center Board, with recommendations by the STEM AC staff and in consultation with the USBE, shall approve final funding allocations for successful applicants. Awards will be administered by the STEM Action Center, using an established grant agreement process that has been approved by the State of Utah Division of Purchasing.
   (6) Fiscal agents may apply on behalf of sub-contracted partners. If approved for funding, they shall use their organization's approved procurement procedures and policies for sub-contract awards.

R459-1-4. Outcome Based Measures.
   (1) The STEM Action Center, with input from the review committee, shall define the outcome-based measures for each application cycle and make such measures available online or in the application for each grant cycle. The measures may be quantitative or qualitative in nature.
   (2) The STEM Action Center shall provide evaluation, monitoring and reporting support for the grants through a third party evaluation partner.

KEY: STEM action center, computing partnerships
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 9-22-1
Fiscal Information

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

A) State budget:
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no anticipated costs or savings to the state budget due to this repeal.

B) Local governments:
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no anticipated costs or savings for local governments due to this repeal.

C) Small businesses ("small business" means a business employing 1-49 persons):
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no anticipated costs or savings to small businesses due to this repeal.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no anticipated costs or savings to non-small businesses due to 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):
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no anticipated costs or savings to other persons due to this repeal.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
ORS does not currently pursue actions to acquire real property to satisfy financial obligations and medical support cooperation requirements will now exist in Rule R527-39. Therefore, there are no compliance costs due to 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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Benefits

| Total Fiscal Benefits   | $0               | $0                 | $0               |
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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:

| Citation Information   | Section 59-2-1101 | Section 62A-1-111 | Section 62A-11-104 |

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*UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22*
**R527-800-1.** **Liens, Cost of Sale.**

The costs of sale which are allowed are those provided in 62A-11-111.

**R527-800-5.** **Sanction, Medical Support, TPL, Paternity.**

In accordance with 42 CFR 433.147-148 a recipient of medical assistance must cooperate with the state agency in providing information regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset medicaid expenditures. Failure to cooperate will result in the recipient being removed from the medical assistance case.

**KEY:** enforcement, civil procedures, Medicaid, welfare fraud

**Date of Last Change:** September 18, 2001

**Notice of Continuation:** August 14, 2020

**Authorizing, and Implemented or Interpreted Law:** 59-2-1101; 62A-11-111; 62A-11-104; 42 CFR 433.147; 42 CFR 433.148

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** New

**Utah Admin. Code Ref (R no.):** R547-2

**Filing ID:** 54073

**Agency Information**

1. **Department:** Human Services

   **Agency:** Juvenile Justice Services

   **Building:** MASOB

   **Street address:** 195 N 1950 W 3rd Floor

   **City, state and zip:** Salt Lake City, UT 84116

**Contact person(s):**

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<tr>
<th>Name</th>
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<tr>
<td>Reg Garff</td>
<td>801-602-6261</td>
<td><a href="mailto:rgarff@utah.gov">rgarff@utah.gov</a></td>
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<tr>
<td>Jonah Shaw</td>
<td>385-310-2389</td>
<td><a href="mailto:jshaw@utah.gov">jshaw@utah.gov</a></td>
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Please address questions regarding information on this notice to the agency.

**General Information**

2. **Rule or section catchline:**

   R547-2. Credit for Good Behavior

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

   **(Why is the agency submitting this filing?):**

   The purpose of this rule is to establish standards for a minor's good behavior in which credit may be earned for early release from detention.

4. **Summary of the new rule or change**

   **(What does this filing do? If this is a repeal and reenact, explain the...**
This rule establishes the purpose and authority, the definitions, and determines the credit for good behavior. This rule provides incentive for the good behavior of minors while locked in detention, thus improving safety of staff who work in detention and minors being held in locked detention.

Fiscal Information

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

A) State budget:
The creation of this rule will have no impact on the state budget. This rule provides incentive for the good behavior of minors while in locked detention, and it is not anticipated that it will result in a fiscal impact.

B) Local governments:
The creation of this rule will have no impact on local governments. This rule provides incentive for the good behavior of minors while in locked detention, and it is not anticipated that it will result in a fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):
The creation of this rule will have no impact on small businesses. This rule provides incentive for the good behavior of minors while in locked detention, and it is not anticipated that it will result in a fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The creation of this rule will have no impact on non-small businesses. This rule provides incentive for the good behavior of minors while in locked detention, and it is not anticipated that it will result in a 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):
The creation of this rule will have no impact on persons other than small businesses, non-small businesses, state, or local government entities. This rule provides incentive for the good behavior of minors while in locked detention, and it is not anticipated that it will result in a fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no anticipated compliance costs for affected persons.

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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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:
Section 80-6-704  Section 80-5-202

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: 11/01/2021

R547. Human Services, Juvenile Justice Services.
R547-2. Credit for Good Behavior.
R547-2-1. Authority and Purpose.
   Section 80-5-202 authorizes the Division to establish a rule that describes good behavior for which credit may be earned pursuant to Subsection 80-6-704(4).

R547-2-2. Definitions.
   “Serious problem behavior” is defined as behavior that is a threat to the safety and wellbeing of youth or staff, significant disruption of the program, or significant property damage.

R547-2-3. Credit for Good Behavior.
   (1) A minor placed in secure detention may receive credit for good behavior while on a commitment after disposition, pursuant to Subsection 80-6-704(4). The rate of credit will be one day of credit for every three days of good behavior spent in detention.
   (2) To be considered for good behavior a minor must, for three days, have no serious problem behavior. Significant problem behavior can be:
       (a) physical aggression toward others;
       (b) verbal threats to kill or harm someone;
       (c) repeated display of gang affiliation;
       (d) significant property damage;
       (e) repeated disruptions that create an unsafe environment;
       (f) encouraging or supporting others to engage in any serious problem behavior; or
       (g) possession of contraband that can harm someone.
       (3) A determination of what constitutes good behavior and significant problem behavior shall be made by the facility administration in accordance with this rule.
       (4) A juvenile offender may appeal a denial of good time or the determination of serious problem behavior to the Division Director or designee.

KEY: human services, detention, Juvenile Justice Services
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 80-6-704; 80-5-202

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal
Utah Admin. Code Ref (R no.): R547-3  Filing ID 54070

Agency Information

1. Department: Human Services
   Agency: Juvenile Justice Services
   Room no.: 3rd Floor
   Building: MASOB
   Street address: 195 N 1950 W
   City, state and zip: Salt Lake City, UT 84116
   Mailing address: 195 N 1950 W, 3rd Floor
   City, state and zip: Salt Lake City, UT 84116
   Contact person(s):
   Name: Reg Garff  Phone: 801-602-6261  Email: rgarff@utah.gov
   Name: Jonah Shaw  Phone: 385-310-2389  Email: jshaw@utah.gov
   Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
   R547-3. Juvenile Jail Standards

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
   The Utah Commission on Criminal and Juvenile Justice now has authority over this area of rule and Rule R356-4 has replaced 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 filing repeals Rule R547-3 in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
Repeal of this rule will not impact the state budget. This change is clarifying in nature and reflects current practices and procedures.

B) Local governments:
It is not anticipated that local governments will see any fiscal impact from this repeal. The change to the applicants’ background screening application will not impact local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
It is not anticipated that small businesses will see any fiscal impact from this repeal. This change is clarifying in nature and reflects current practices and procedures.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
It is not anticipated that non-small businesses will see any fiscal impact from this repeal. This change is clarifying in nature and reflects current practices 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):
Persons other than small businesses, non-small businesses, state, or local government entities, will not see a fiscal impact from this change. This change is clarifying in nature and upholds current practices 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 anticipated compliance costs for 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 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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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:
Subsection 63M-7-204(1)(s)

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: 12/15/2021

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: | 11/01/2021 |

R547. Human Services, Juvenile Justice Services.

R547.3. Juvenile Jail Standards.

R547.3-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547.3-2. Definitions and References.

(1) Definitions.

(a) “Low density population” means ten or less people per square mile.

(b) “Nonoffenders” means abused, neglected, or dependent youth.

(c) “Sight and sound separation” means that juvenile detainees must be located or arranged as to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(d) “Status offense” means a violation of the law that would not be a violation but for the age of the offender.

(2) References.

(a) Standards from the Manual of Standards for Juvenile Detention Facilities and Services, also referred to as American Correctional Association (ACA) Standards, revision date of February 1979, were researched as background for the rules.

R547.3-3. Standards for Six Hour Juvenile Detention in Jail.

(1) Juveniles under the age of 18 shall not be confined in a county operated jail used for accused or convicted adult offenders except:

(a) when the juvenile is 16 years of age or older and district court has exclusive original jurisdiction, Section 78A-6-701;

(b) when the juvenile is 16 years of age or older and has been bound over to district court for criminal proceedings, in accordance with serious youth offender procedures, Subsection 78A-6-702(3);

(c) when the juvenile is 14 years of age or older and has been certified to be held for criminal proceedings in district court, Section 78A-6-703 and Subsection 78A-6-602(3);

(d) in areas characterized by low density population. The state Juvenile Justice Services agency may promulgate regulations providing for specific approved juvenile holding accommodations within adult facilities which have acceptable sight and sound separation to be utilized for short-term holding purposes with a maximum confinement of six hours to allow adequate time for identification or interrogation and to evaluate needs and circumstances regarding transportation, detention, or release of the juvenile in custody, Section 62A-7-201.

(2) The Division of Juvenile Justice Services may certify a jail to hold juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession for up to six hours if the following criteria are met:

(a) in areas characterized by low density population;

(b) no existing acceptable alternative placement exists which will protect the juvenile and the community;

(c) the county is not served by a local juvenile detention facility;

(d) no juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.

(3) Any jail or adult holding facility intended for use for juveniles must be certified by the State Division of Juvenile Justice Services.

(4) There shall be acceptable sight and sound separation from adult inmates. Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(5) The jail’s juvenile detention room(s) shall conform to all applicable zoning laws.

(6) The jail’s juvenile detention room(s) shall conform to all applicable local and state safety, fire, and building codes.

(7) The jail’s juvenile detention room(s) shall conform to all applicable local and state health codes.

(8) The juvenile population shall not exceed the jail’s certified capacity for juveniles.

(9) All juvenile housing and activity areas provide for, at a minimum:

(a) toilet and wash basin accessibility;

(b) hot and cold running water in wash basin and drinking water;

(c) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;

(10) Whenever juveniles are detained, there shall be at a minimum:

(a) Removal of all property from the juvenile that could compromise the juvenile’s safety, such as belts, shoelaces and suspenders, prior to placing a juvenile in a holding room;

(b) constant on-site supervision through visual or TV monitoring and audio two way communication;

(c) frequent personal checks to maintain communication with the juvenile and prevent panic and feelings of isolation;

(d) a written record of significant incidents and activities of the juvenile.

(11) The written policies and procedures providing for specific rules governing the supervision of inmates by jail staff of the opposite sex shall specifically provide for the following when the inmates are juveniles:

(a) An adult staff member of the same sex as the juvenile shall be present when a juvenile is securely held.

(b) Except in an emergency the staff member entering a juvenile’s sleeping room shall be of the same sex. If there are two staff members entering the sleeping room, there may be one male and one female. When an emergency prevents the same sex staff member from entering the juvenile’s room, then at least two opposite sex staff members must be present and a written report must be completed and kept on file justifying the necessity for the deviation from same sex supervision.

(c) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Procedures for body cavity searches shall conform to jail standards.

(d) A staff member of the same sex shall supervise the personal hygiene activities and care such as showers, toilet, and related activities.
(e) The use of restraints or physical force are restricted to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. An no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(12) Male and female residents shall not occupy the same sleeping room at the same time.

(13) There shall be no viewing devices, such as peep holes, mirrors, of which the juvenile is not aware.

(14) No inmate, juvenile or adult, shall be allowed to have authority, or disciplinary, control over, be permitted to supervise, or provide direct services to any other detained juveniles.

(15) The juvenile’s health and safety while jailed shall be safeguarded. The jail administration shall:

(a) have services available to provide 24 hours a day emergency medical care;

(b) provide for immediate examination and treatment, if necessary, of juveniles injured on the jail premises;

(c) not accept juveniles who are unconscious, obviously seriously injured, obviously a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the jail;

(d) train all jail staff members to recognize symptoms of mental illness;

(e) provide for the detoxification of a juvenile in the jail only when there is no community health facility to transfer the juvenile to for detoxification;

(f) require that any medical services provided while the juvenile is held be recorded.

(16) As long as classification standards are met, juvenile detainees may be housed together if age, compatibility, dangerousness, and other relevant factors are considered.

(17) Adult jails that are certified to hold juveniles for up to six hours must have written procedures which govern the acceptance of such juveniles. These procedures must include the following:

(a) When an officer or other person takes a juvenile into custody, the officer shall without unnecessary delay notify the parents, guardian, or custodian.

(b) The jail staff shall verify with the officer or other person taking the juvenile into custody that the juvenile’s parents, guardian, or custodian have been notified of the juvenile’s detention in jail. If notification did not occur, jail staff will contact the juvenile’s parents, guardian, or custodian.

(c) The officer shall also promptly file with the detention or shelter facility a brief written report stating the facts which appear to bring the juvenile within the jurisdiction of the Juvenile Court and give the reason why the juvenile was not released.

(18) There must be written policy and procedures that require that the decision to detain the juvenile for up to six hours or to release the juvenile from jail be in accordance with the following principles:

(a) A juvenile shall not be detained by policy any longer than is reasonably necessary to obtain the juvenile’s name, age, residence, and any other necessary information, and to contact the juvenile’s parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parents, guardian, or custodian. On release from jail, the parent or other person to whom the juvenile is released may be required to sign a written promise on forms supplied by the court to bring the juvenile to court at a time set, or to be set, by the court. Subsection 78A-6-112(3).

(19) The written procedures for admitting juvenile detainees will include completion of an admission form on all juveniles that includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title, of delivering officer;

(e) specific charge(s);

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any;

(20) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-3-3.

(21) There must be a written procedure governing the transfer of a juvenile to an appropriate juvenile facility which includes the following:

(a) If the juvenile is to be transferred to a juvenile facility, the juvenile must be transported there without unnecessary delay, but in no case more than six hours after being taken into custody. A copy of the report stating the facts which appear to bring the juvenile within the jurisdiction of the court and giving the reason for not releasing the juvenile shall be transmitted with the juvenile when transported.

(b) A written record shall be retained on file of all juveniles released, stating as a minimum to whom they were released, the release date, time, and authority.

(22) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified jail, shall have the same legal and civil rights as an adult inmate.

(b) A juvenile, while held in a certified jail, shall have the right to the same number of telephone calls as an adult inmate held the same amount of time.

(c) Unless the juvenile is to be transferred to an approved detention facility, visits should be limited to the juvenile’s attorney, clergyman, and officers of the court. If the juvenile is to be transferred, an effort shall be made to provide for visitation by the juvenile’s parents, guardian, or custodian prior to the transfer.

(d) If a juvenile is held during daylight hours the juvenile shall be allowed access to reading materials. Where feasible, the juvenile should be provided access to physical exercise and recreation, such as radio and TV.
____ (23) A case record shall be maintained on each juvenile admitted to a certified jail. Policies and procedures concerning the case records and the information in them shall be established which meet the following as a minimum:

____ (a) The contents of case records shall be identified and separated according to an established format.
____ (b) Case records shall be safeguarded from unauthorized and improper disclosure, in accordance with written policies and in compliance with Section 78A-6-209 and Section 78A-6-1104.
____ (c) The facility shall assure that no information shall be entered into a case record that is incomplete, inaccurate, or unsubstantiated. At any point that it becomes apparent that this has occurred, the facility shall immediately make the necessary correction.

____ (24) A case record shall be maintained on each juvenile, as appropriate, and kept in a secure place. It shall contain as a minimum the following information and documents:

____ (a) initial intake information form;
____ (b) documented legal authority to accept, detain, and release juveniles;
____ (c) current detention medical/health care record;
____ (d) consent for necessary medical or surgical care, signed by parent, person acting in loco parentis, Juvenile Court judge, or facility official;
____ (e) record of medication administered;
____ (f) record of incident reports;
____ (g) a record of cash and valuables held;
____ (h) visitors’ names, if any, personal and professional, and dates of visits;
____ (i) final discharge or transfer report.

____ (25) The jail facility director shall submit to the state Division of Juvenile Justice Services agency a monthly accurate report of the number of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the State.

KEY: juvenile corrections
Date of Last Change: November 12, 2008
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 62A-7-201

NOTICE OF PROPOSED RULE

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Agency Information

1. Department: Human Services

Agency: Juvenile Justice Services

Room no.: 3rd Floor

Building: MASOB

Street address: 195 N 1950 W

City, state and zip: Salt Lake City, UT 84116

Mailing address: 195 N 1950 W, 3rd Floor

City, state and zip: Salt Lake City, UT 84116

Contact person(s):

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<tr>
<td>Reg Garff</td>
<td>801-602-6261</td>
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<td>Jonah Shaw</td>
<td>385-310-2389</td>
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R547-7. Juvenile Holding Room Standards

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

The Utah Commission on Criminal and Juvenile Justice now has authority over this area of rule and Rule R356-4 has replaced 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 filing repeals Rule R547-7 in its entirety.

Fiscal Information

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

A) State budget:

Repeal of this rule will not impact the state budget. This change is clarifying in nature and reflects current practices and procedures.

B) Local governments:

It is not anticipated that local governments will see any fiscal impact from this repeal. The change to the applicants’ background screening application will not impact local governments.

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

It is not anticipated that small businesses will see any fiscal impact from this repeal. This change is clarifying in nature and reflects current practices and procedures.

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

It is not anticipated that non-small businesses will see any fiscal impact from this repeal. This change is clarifying in nature and reflects current practices 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*):  

Persons other than small businesses, non-small businesses, state, or local government entities, will not see a fiscal impact from this change. This change is clarifying in nature and upholds current practices 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 anticipated compliance costs for 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 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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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 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:  

Subsection 63M-7-204(1)(s)

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:  

12/15/2021

10. This rule change MAY become effective on:  

12/22/2021

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: 11/01/2021

R547. Human Services, Juvenile Justice Services.

R547-7. Juvenile Holding Room Standards.

R547-7-1. Authority.  

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-7-2. Definitions.  

(1) “Nonoffenders” means abused, neglected, or dependent youth.

(2) “Sight and sound separation” means that juvenile detainees must be located or arranged so to be completely separated from incarcerated adults by sight and sound barriers such that the adult inmates cannot see juvenile detainees and vice versa. Also, conversation is not possible between juvenile detainees and adult inmates.

(3) “Status offense” means a violation of the law that would not be a violation but for the age of the offender.
R547-7-3. Standards for Two-Hour Juvenile Detention in Local Law Enforcement Facilities.

(1) Criteria by which juveniles may be held:
   (a) The maximum holding period is two hours as provided for by Subsection 62A-7-201(1).
   (b) Extensive efforts will be made by holding authorities during these two hours to contact the juvenile’s parents, guardian, or other responsible adult and arrange for the juvenile’s release.
   (c) No juvenile under ten years of age will be held by holding authorities, as set forth in the following standards, for any length of time.
   (d) Only juveniles who are alleged to have committed a non-status offense or are accused of juvenile handgun possession may be detained for identification or interrogation or while awaiting release to a parent or other responsible adult.
   (e) Despite the authorization to hold a juvenile in a certified holding room for up to two hours, no juvenile shall be held in such a room unless there is no other alternative which will protect the juvenile and the community.

(2) Any holding facility intended for use for juveniles must be certified by the state Division of Juvenile Justice Services, Subsection 62A-7-201(4).

(3) There shall be acceptable sight and sound separation from adult inmates, as found in Subsection 62A-7-201(4). Written policy and procedure shall exist to assure supervision is maintained so that both visual contact and verbal communication between juvenile detainees and adult inmates is prohibited.

(4) The juvenile holding rooms and the building in which they are located shall conform to all applicable:
   (a) zoning laws;
   (b) local and state safety, fire, and building codes;
   (c) local and state health codes.

(5) All two-hour holding room areas provide for, at a minimum:
   (a) access to a toilet and wash basin;
   (b) adequate shelter, heat, light, and ventilation that does not compromise security or enable escape;
   (c) access to a drinking fountain;
   (d) adequate utilitarian furnishings, including suitable chairs or benches.

(6) Whenever juveniles are detained, there shall be at a minimum:
   (a) Removal of all property from the juvenile that could compromise the juvenile’s safety, such as belts, shoelaces, and suspenders, prior to placing a juvenile in a holding room;
   (b) constant on-site supervision, through visual monitoring and audio two-way communication, Subsection 62A-7-201(4);
   (c) a P.O.S.T. certified or qualified staff must be available to intervene within 60 seconds should a problem or medical emergency arise with a juvenile;
   (d) frequent personal checks must occur with the juvenile to maintain communication and prevent panic and feelings of isolation;
   (e) a written record of significant incidents and activities of the juvenile.

(7) A staff member of the same sex shall supervise the personal hygiene activities and care such as toilet related activities.

(8) When procedures require physical contact or examination, such as strip searches, these shall be done by a staff member of the same sex in private without TV monitoring. Body cavity searches shall be performed only where there is probable cause to believe that weapons or contraband will be found. With the exception of the mouth, all body cavity searches performed visually will be done by two personnel of the same sex as the youth. Manually performed body cavity searches will be performed by medically trained personnel, at least one of which will be the same sex as the youth being examined.

(9) There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.

(10) No detainee, juvenile or adult, shall be allowed to have authority or disciplinary control over, be permitted to supervise, or provide services of any nature to other detained juveniles.

(11) The juvenile’s health and safety while in the holding room shall be safeguarded by following standard elements on medical and health services. In order to assure this, the holding room administration shall:
   (a) have services available to provide 24 hours a day emergency medical care;
   (b) provide for immediate examination and treatment, if necessary, of juveniles injured on the holding room premises;
   (c) not accept juveniles who are unconscious, obviously seriously injured, obviously a suicide risk, obviously emotionally disturbed, or obviously under the influence of alcohol or drugs and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the holding room;
   (d) train all holding room staff members to recognize symptoms of mental illness;
   (e) require that any medical services provided while the juvenile is held be recorded.

(12) As long as classification standards are met, juveniles may be detained together if age, compatibility, dangerousness, and other relevant factors are considered. Juveniles of opposite genders may not be detained together.

(13) There must be written procedures in holding rooms governing the acceptance of juveniles, which include the following:
   (a) When an officer or other person takes a juvenile into custody, they shall, without unnecessary delay, notify the parents, guardian, or custodian.
   (b) The holding room staff shall verify with the officer or other person taking the juvenile into custody that the juvenile’s parents, guardian, or custodian have been notified of the juvenile’s detention. If notification did not occur, agency staff will contact the juvenile’s parents, guardian, or custodian.

(14) There must be written policy and procedure that require that the decision to detain the juvenile for up to two hours or release the juvenile be in accordance with the following principles: Sections 78A-6-112, 78A-6-113, and 62A-7-201.

(a) A juvenile shall not be detained any longer than is reasonably necessary to obtain their name, age, residence and any other necessary information, and to contact the juvenile’s parents, guardian, or custodian.

(b) The juvenile shall then be released to the care of the parent or other responsible adult unless the immediate welfare or the protection of the community requires that the juvenile be detained or that it is unsafe for the juvenile or the public to leave the juvenile in the care of the parent, guardian or custodian. If after interrogation it is found that the juvenile should be detained, transfer to an appropriate juvenile facility shall occur without unnecessary delay.

(c) A release record must be maintained which includes:
   (i) information regarding physical and emotional condition of juvenile;
   (ii) relationship of adult assuming release responsibility to juvenile;
   (iii) means of proof of adult identification;
(iv) signature of said adult assuming responsibility regarding juvenile's physical and emotional condition and understanding of reason for holding the juvenile in custody.

(15) An admission or referral form must be completed on each juvenile detained which includes, as a minimum, the following information:

(a) date and time of admission and release;

(b) name, nicknames, and aliases;

(c) last known address;

(d) law enforcement jurisdiction, name, and title of delivering officer;

(e) specific charges;

(f) sex;

(g) date of birth and place of birth;

(h) race or nationality;

(i) medical problems, if any;

(j) parents, guardian, or responsible person to notify in case of emergency, including addresses and telephone numbers;

(k) space for remarks, to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos;

(l) probation officer or caseworker assigned, if any.

(16) The written procedures governing the stay of a juvenile shall include:

(a) A juvenile, while held in a certified holding room, shall have the same legal and civil rights as an adult detainee.

(b) A juvenile, while held in a certified holding room, shall have the right to the same number of telephone calls as an adult detainee held the same amount of time.

(17) A case record shall be maintained on each juvenile and shall be kept in a secure place. It shall contain, as a minimum, the following information and documents:

(a) initial intake information form;

(b) documented legal authority to accept, detain, and release youth;

(c) record of incident reports;

(d) a record of cash and valuables held;

(e) visitors’ names, if any, personal and professional, and dates of visits;

(f) final release or transfer report.

(18) The holding room facility director shall submit to the state Division of Juvenile Justice Services a monthly accurate report of the numbers of juveniles confined during the preceding month and provide information on each juvenile in the categories indicated on the report form as provided by the state.

(19) Written policy and procedure provide that when a juvenile is in need of hospitalization, a staff member accompanies and stays with the juvenile until admission, if permitted by medical personnel, or until an adult family member or legal guardian arrives to remain with the juvenile.

(20) All informed consent standards in the jurisdiction are observed and documented for medical care. The informed consent of parent, guardian, or legal custodian applies when required by law. When health care is rendered against the patient’s will, it is ordered by a standing magistrate or deemed an emergency as defined by Section 26-8a-601.

(21) Written policy and procedure provide that juveniles are not subjected to corporal or unusual punishment, humiliation, or mental abuse.

(22) Written policy and procedure restrict the use of restraints or physical force to instances of justifiable self-defense, protection of juveniles and others, protection of property and prevention of escapes, and only when it is necessary to control juveniles and in accordance with the principle of least restrictive action. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to the facility administrator.

(23) At intake, each juvenile detained is informed of the steps in the detention process.

(24) Juvenile processing procedures shall include written safeguards to prohibit nonoffenders from being detained in the facility and to ensure youth are held in accordance with R547-7-3(1)(c) and (d).

NOTICES OF PROPOSED RULES

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R547-10

Filing ID 54072

Agency Information

1. Department: Human Services

Agency: Juvenile Justice Services

Room no.: 3rd Floor

Building: MASOB

Street address: 195 N 1950 W

City, state and zip: Salt Lake City, UT 84116

Mailing address: 195 N 1950 W, 3rd Floor

City, state and zip: Salt Lake City, UT 84116

Contact person(s):

Name: Reg Garff

Phone: 801-602-6261

Email: rgarff@utah.gov

Name: Jonah Shaw

Phone: 385-310-2389

Email: jshaw@utah.gov

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

General Information

2. Rule or section catchline: R547-10. Ex-Offender Policy

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

The Department of Human Services (Department), Office of Administration, Administrative Services, Licensing now conducts all background checks for employees of the Department and contracted services and does so under Rule R501-14, Human Service Program Background

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
Fiscal Information

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

A) State budget:
The repeal of this rule is due to reviews established in Executive Order No. 2021-12; the repeal is technical in nature and does not reflect substantive changes to current practices or procedures. The Office of Licensing now conducts all background checks for employees of the Department and contracted services, this procedure has been in place and accounted for some time now, it is not anticipated that this repeal would create a fiscal cost or savings to the state budget.

B) Local governments:
It is not anticipated that local governments will see any fiscal impact from this repeal. The change to the applicants’ background screening application does not impact local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
It is not anticipated that small businesses will see any fiscal impact from this repeal. This repeal is clarifying in nature and reflects current practices and procedures.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
It is not anticipated that non-small businesses will see any fiscal impact from this repeal. This change is clarifying in nature and reflects current practices 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):
Persons other than small businesses, non-small businesses, state, or local government entities, will not see a fiscal impact from this change. This repeal is clarifying in nature and upholds current practices 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 anticipated compliance costs for affected persons. This repeal is clarifying in nature and upholds current practices 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):
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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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.
Notice of Continuation: March 27, 2017
Date of Last Change: November 12, 2008

KEY: ex-convicts, juvenile corrections

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: 11/01/2021 |

R547. Human Services, Juvenile Justice Services.
R547-10-1. Authority.
Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-10-2. Ex-Offender Policy.
The Division and its contracted providers shall not employ any ex-offender convicted of a felony or under the supervision of the criminal justice system, or any misdemeanor convictions for crimes against children under the age of 18. Potential employees with a documented history of drug or alcohol abuse, domestic violence, or sexual offense may also be excluded from employment with the Division.

KEY: ex-convicts, juvenile corrections
Date of Last Change: November 12, 2008
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 62A-7-104]

NOTICE OF PROPOSED RULE

| TYPE OF RULE: | Amendment |

| Utah Admin. Code Ref (R no.): | R547-11 | Filing ID 54068 |

Agency Information

| 1. Department: | Human Services |

Agency: Juvenile Justice Services
Building: MASOB
Street address: 195 N 1950 W, 3rd Floor
City, state and zip: Salt Lake City, UT 84116
Contact person(s):

<table>
<thead>
<tr>
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<td><a href="mailto:jshaw@utah.gov">jshaw@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:
R547-11. Guidelines for the Transfer to the Department of Corrections of a Youthful Prisoner Provisionally Housed in a Juvenile Justice Services Secure Care Facility

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 this rule in-line with Executive Order No. 2021-12, issued by Utah's Governor on 05/06/2021. Changes will also bring the code citations and definitions up to date with the new juvenile code.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule governs the provisional transfer of certain minors to the Utah Department of Corrections. Various language is being updated to reflect current standards and practices. These changes also bring the rule in-line with the current Administrative Rules' Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
   A) State budget:
The amendment of this rule will have no impact on the state budget. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

   B) Local governments:
The amendment of this rule will have no impact on local governments. This rule is being amended following the review established in Executive Order No. 2021-12. This
amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on small businesses. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on non-small businesses. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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 of this rule will have no impact on persons other than small businesses, non-small businesses, state, or local government entities. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on compliance costs for affected persons. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is 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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Local Governments  $0  $0  $0
Small Businesses  $0  $0  $0
Non-Small Businesses  $0  $0  $0
Other Persons  $0  $0  $0
Total Fiscal Cost  $0  $0  $0

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:

Section 62A-1-111 | Section 80-6-507

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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
R547-11. Purpose and Authority.

(1) Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules. Section 78A-6-705 directs the Division of Juvenile Justice Services to adopt by administrative rule procedures for the transfer of a minor.

(2) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, this rule establishes guidelines for the transfer, to the physical custody of the Utah Department of Corrections, of a [youthful prisoner] minor who has been provisionally housed in a Division of Juvenile Justice Services [secure care facility].

R547-11-2. Purpose and Scope.

(1) "Division" means the Division of Juvenile Justice Services that provides care, treatment, and supervision of juveniles who are committed to the criminal justice system for offenses committed before the age of eighteen (80-6-507). [Facility][Division Facility][s] means a long-term secure care facility for juveniles operated by the Division.

(2) [Facility][Division Facility][s] means a long-term secure care facility for juveniles operated by the Division.

R547-11-3. Definitions.

(1) [Facility][Division Facility][s] means a long-term secure care facility for juveniles operated by the Division.

(2) "Division" means the Division of Juvenile Justice Services.

(3) "Minor" is as defined in Section 80-6-501.


(1) The Division must transfer to the custody of the Utah Department of Corrections a [youthful prisoner] minor who has reached the age of [18]-21, and has not been paroled or otherwise released from incarceration, while provisionally housed in a Division facility.

(2) The Division may transfer to the custody of the Utah Department of Corrections a [youthful prisoner] minor who has been provisionally housed in a Division facility. [Facility][Division Facility][s] means a long-term secure care facility for juveniles operated by the Division.

(3) The Division Director shall have final decision-making authority pursuant to this rule.


(1) The Division must transfer to the custody of the Utah Department of Corrections a [youthful prisoner] minor who has reached the age of [18]-21, and has not been paroled or otherwise released from incarceration, while provisionally housed in a Division facility.

(2) The Division may transfer to the custody of the Utah Department of Corrections a [youthful prisoner] minor who has been provisionally housed in a Division facility. [Facility][Division Facility][s] means a long-term secure care facility for juveniles operated by the Division.

(3) The Division Director shall have final decision-making authority pursuant to this rule.

KEY: juveniles, juvenile corrections, juvenile transportation, youthful prisoners

Date of Last Change: 2021[November 24, 2015]

Notice of Continuation: November 19, 2020

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 63G-3; 78A-6-705; 80-6-507
General Information

2. Rule or section catchline:
R547-12. Division of Juvenile Justice Services Classification of Records

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

It has been determined that this rule is not necessary and presents the possibility of directing the misclassification of Juvenile Justice Services (JJS) documents based on the GRAMA statute.

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.

Fiscal Information

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

A) State budget:

The repeal of this rule will have no impact on the state budget. This rule is being repealed following the review established in Executive Order No. 2021-12. The repeal of this rule does not impact current practices and is not fiscal in nature.

B) Local governments:

The repeal of this rule has no impact on costs to local governments. This rule is being repealed following the review established in Executive Order No. 2021-12. The repeal of this rule does not impact current practices and is not fiscal in nature.

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

The repeal of this rule has no impact on costs to small businesses. This rule is being repealed following the review established in Executive Order No. 2021-12. The repeal of this rule does not impact current practices and is not fiscal in nature.

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

The repeal of this rule has no impact on costs non-small businesses. This rule is being repealed following the review established in Executive Order No. 2021-12. The repeal of this rule does not impact current practices and is not fiscal in nature.

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 repeal of this rule has no impact on costs to persons other than small businesses, non-small businesses, state or local government entities. This rule is being repealed following the review established in Executive Order No. 2021-12. The repeal of this rule does not impact current practices and is not fiscal 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 is no impact to compliance costs for affected persons with the repeal of this rule.

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

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
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**NOTICES OF PROPOSED RULES**

**Type of Rule**: Amendment

**Ref (R no.)**: R547-14

**Filing ID**: 54067

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**Agency Information**

1. **Department**: Human Services
2. **Agency**: Juvenile Justice Services
3. **Building**: MASOB
4. **Street address**: 195 N 1950 W, 3rd Floor
5. **City, state and zip**: Salt Lake City, UT 84116

**Contact person(s)**:

- **Name**: Reg Garff, Phone: 801-602-6261, Email: rgarff@utah.gov
- **Name**: Jonah Shaw, Phone: 385-310-2389, Email: jshaw@utah.gov

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**Agency Authorization Information**

- **Agency head or designee, and title**: Tracy Gruber, Executive Director, Date: 11/01/2021

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**NOTICE OF PROPOSED RULE**

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

The purpose of this amendment is to bring the code citations and definitions up to date with the new juvenile code; it also brings the rule in-line with the current Administrative Rules' Rulewriting Manual.

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**R547. Human Services, Juvenile Justice Services.**

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<th>Rule</th>
<th>Citation</th>
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<tbody>
<tr>
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<td>[62A-7; 63G-2-101]</td>
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**General Information**

1. **Rule or section catchline**: R547-14. Possession of Prohibited Items in Juvenile Detention Facilities

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**R547-12-2, Division of Juvenile Justice Services Classification of Records.**

- (1) The following classification scheme applies to the youth records of the Division of Juvenile Justice Services:
  - (a) Quality Service Review Case Studies and Reports are classified as protected information.
  - (b) Plethysmograph, psychological, and psychiatric reports are classified as controlled information. Other records produced by the Division of Juvenile Justice Services or its contractors are controlled if the agency reasonably believes that releasing the information in the

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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.

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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**: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

**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**

<table>
<thead>
<tr>
<th>Agency head or designee, and title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tracy Gruber, Executive Director</td>
<td>11/01/2021</td>
</tr>
</tbody>
</table>
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):

These changes bring the code citations and definitions up to date with the new juvenile code; it also brings the rule in-line with the current Administrative Rules’ Rulewriting Manual.

Fiscal Information

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

A) State budget:

The amendment of this rule will have no impact on the state budget. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

B) Local governments:

The amendment of this rule will have no impact on local governments. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on small businesses. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on non-small businesses. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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 of this rule will have no impact on persons other than small businesses, non-small businesses, state, or local government entities. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is not fiscal in nature.

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

The amendment of this rule will have no impact on compliance costs for affected persons. This rule is being amended following the review established in Executive Order No. 2021-12. This amendment does not impact current practices and is 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.)

<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>Net Fiscal Benefits</td>
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</tbody>
</table>
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:
Section 80-5-202

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021
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: 11/01/2021

R547. Human Services, Juvenile Justice Services.  
R547-14-1. Definitions.  
(1) "Juvenile detention facility" as authorized by Section 80-5-501, means a specific location that is operated directly or by contract by the Division of Juvenile Justice Services for delivery of services to youth, and in which:
(a) youth in the temporary or legal custody of the Division of Juvenile Justice Services are present; and
(b) public access is controlled.  
(2) "Secure area" has the same meaning as provided in Section 76-8-311.1.  
(3) "Secure care facility" as authorized by Section 80-5-503, means a specific location that is operated directly or by contract by the Division of Juvenile Justice Services for delivery of services to youth in which:
(a) youth placed in the custody of the Division of Juvenile Justice Services pursuant to Section 80-6-705 are present; and
(b) public access is controlled.  
R547-14-2. Weapon Restrictions.  
(1) No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter a secure area of any juvenile detention or secure care facility with any items prohibited by UCA Section 76-8-311.1 or 76-8-311.3.  
(2) The director or administrator of each juvenile detention and secure care facility shall:
(a) establish secure areas within the facility; and
(b) prominently display the following notice at each entrance of a secure area:  
"This is a secure area as defined in UCA 76-8-311.1. No person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter if that person has possession of any firearm, ammunition, dangerous weapon, explosive, or controlled substance. Violation of this prohibition is a third degree felony and violators are subject to prosecution. Firearms may be placed in secure weapons storage as provided by the facility."; and
(c) provide secure weapon storage at each entrance to a secure area facility.

KEY: prohibited items, prohibited devices, firearms, weapons
Date of Last Change: 2021[April 30, 2002]
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 76-8-311.1; 76-8-311.3; 76-10-523.5; 53-5-710

NOTICE OF PROPOSED RULE

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:
R590-267. Personal Injury Protection Relative Value Study

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The change updates the conversion factors and publications for use in 2022 and 2023.

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 adds conversion factors and publications for physicians, dentists, and chiropractors to use when determining the reasonable value of services provided to patients on or after 01/01/2022, and removes the factors and publications that were to be used through 2019.

Fiscal Information

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

A) State budget:
The list price for the Relative Values for Physicians (RVP) 2021 is $1,000 and for the 2021 Relative Values for Dentists (RVD) is $600. The Department has arranged a 50% discount for purchasers with a Utah address. The Department of Insurance (Department) will be required to purchase two electronic copies of the RVP 2021 at $600 each and two electronic copies of the RVD 2021 at $300 each because these publications are incorporated by reference. One copy will be maintained by the Department and one copy will be maintained by the Office of Administrative Rules per rulemaking requirements. The state budget includes an annual appropriation of $119,000 per year for the Relative Value Study.

Estimated cost to State Government: $119,000 for state budget appropriations + 2 purchases of RVP ($500) + 2 purchases of RVD ($300) = $120,600.

B) Local governments:
There will be no cost or savings to local governments. This rule covers the method by which providers determine the reasonable value of services they provide to consumers.

C) Small businesses ("small business" means a business employing 1-49 persons):
Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase the RVP 2021 or RVD 2021 publication that is incorporated by reference in this rule. The list price for the RVP 2021 is $1,000 and for the 2021 RVD is $600. The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2021 is $500 for an electronic copy. The cost of the RVD 2021 is $300 for an electronic copy. Hard copies are no longer available. By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges or services they provide to those injured in automobile accidents.

Estimated costs to small business: Purchases of RVP ($500) x 2,267 Physician and Chiropractor Offices + Purchases of RVD ($300) x 1,739 Dental Offices = $1,655,200.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase the RVP 2021 or RVD 2021 publication that is incorporated by reference in this rule. The list price for the RVP 2021 is $1,000 and for the 2021 RVD is $600. The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2021 is $500 for an electronic copy. The cost of the RVD 2021 is $300 for an electronic copy. Hard copies are no longer available. By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges or services they provide to those injured in automobile accidents.

Estimated costs to non-small business: Purchases of RVP ($500) x 94 Physician Offices + Purchases of RVD ($300) x 4 Dental Offices = $48,200.

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):
Auto insurers, or those they contract with to service their claims, and health care providers may purchase the RVP 2021 or RVD 2021 publication that is incorporated by reference in the rule. The list price for the RVP 2021 is $1,000 and for the 2021 RVD is $600. The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2021 is $500 for an electronic copy. The cost of the RVD 2021 is $300 for an electronic copy. Hard copies are no longer available. By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah.

Estimated costs to Auto Insurers = Purchases of both RVP and RVD ($800) x 109 Property and Casualty Insurers = $87,200.

Optum, the company that sells the RVP 2021 and RVD 2021, will benefit from increased sales of these products.
Estimated sales to Optum: Purchases of RVP ($500) x 2,472 Physician, Chiropractor, and Insurer businesses + Purchases of RVD ($300) x 1,854 Dental and Insurer businesses = $1,792,200.

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

Affected persons may purchase the RVP 2021 or RVD 2021 publication that is incorporated by reference in this rule. The Department is sensitive to this compliance cost and has arranged a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. The cost of the RVP 2021 is $500 for an electronic copy, while the RVD 2021 is $300 for an electronic copy. Hard copies are no longer available. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Department and the Office of Administrative Rules at no charge.

Small businesses (physicians, dentists, chiropractors) are likely to purchase one publication or the other, depending on their specialization. The net one-time cost for small businesses as a whole may be $1,655,200. The net one-time cost for larger businesses as a whole may be $1,792,200. Other persons (auto insurers) may purchase both publications. The net one-time cost for other persons may be $87,200. The net one-time cost for all affected persons (small businesses and non-small businesses and insurers) may be $1,792,200.

It is also important to note that the Department makes its copies of the RVD and RVP available to any affected parties for free viewing in the Department’s offices.

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):

While amendments to this rule will have a fiscal impact on businesses, the Department has done all it can to minimize the impact by arranging a significant discount to purchasers and making copies freely available at the Department’s office. The Department expects that the vast majority of purchases will happen when this rule takes effect in FY2022. While some companies may purchase later, the Department has no way of estimating how many companies may do so. 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 FY2022</th>
<th>Fiscal Cost FY2023</th>
<th>Fiscal Cost FY2024</th>
</tr>
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<td>State Government</td>
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<td>Small Businesses</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.

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

Incorporations by Reference Information

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

| First Incorporation |
|---------------------|----------------|
| Official Title of   | Relative Values for Dentists |
| Materials Incorporated (from title page) | |
| Publisher | Optum 360 |
| Issue, or version | 2021 |

<table>
<thead>
<tr>
<th>Original Title of Item</th>
<th>Relative Values for Dentists</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
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<td>Issue, or version</td>
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This rule adds, updates, or removes the following title of materials incorporated by references:

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<th>Second Incorporation</th>
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<tbody>
<tr>
<td>Official Title of Materials Incorporated from title page</td>
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<tr>
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This rule adds, updates, or removes the following title of materials incorporated by references:

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<tr>
<td>Official Title of Materials Incorporated from title page</td>
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This rule adds, updates, or removes the following title of materials incorporated by references:

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<tr>
<td>Publisher</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:** 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

**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.
(6) As used in this rule “Relative Value Unit” means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-§44. Conversion Factors.
(1)(a) The following conversion factors shall be used with RVP [2018]2021 to determine the reasonable value of each medical service[s] or accommodation[s] provided on or after January 1, [2020]2022:
   (i) anesthesia, [108.00]109.20;
   (ii) surgery, [225.90]225.88;
   (iii) radiology, [35.60]36.76;
   (iv) pathology, [24.29]24.00;
   (v) medicine, [42.84]43.33;
(b) The conversion factor used with RVD [2019]2021 to determine the reasonable value of each dental service[s] or accommodation[s] provided on or after January 1, [2020]2022 shall be [68.33]66.67.

(2)(a) The following conversion factors shall be used with RVP [2012]2019 to determine the reasonable value of each medical service[s] or accommodation[s] provided from January 1, [2018]2020 through December 31, [2018]2021:
   (i) anesthesia, [99.27]108.00;
   (ii) surgery, [225.00]225.88;
   (iii) radiology, [35.00]35.60;
   (iv) pathology, [25.00]24.00;
   (v) medicine, [13.00]14.74;
(b) The conversion factor used with RVD [2017]2021 to determine the reasonable value of each dental service[s] or accommodation[s] provided from January 1, [2018]2020 through December 31, [2018]2021 shall be [66.67]68.33.

R590-267-§55. Fee Schedule.
The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-§44.

R590-267-§66. [Penalties.
A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-§77. [Severability.
If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable. If any provision of this rule, Rule R590-267, 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: relative value study
Date of Last Change: 2021[January 1, 2020]
penalties are already provided for in statute, and Section R582-15-11 because this rule is already in force. 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.)

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Net Fiscal Benefits
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| $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:
Section 31A-2-404

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 12/15/2021
(a) "Electronic filing" or "file electronically" means:

1. A filing submitted via the internet by a title insurer using an escrow service.
2. An escrow service prepares or compiles documents in connection with an escrow service.

(b) A filing submitted via an email system by an agency title insurance producer or an individual title insurance producer.

(4) "Escrow charge" means a dollar amount charged for an escrow service shown in the Schedule of Minimum Charges for Escrow Services.

(15) "File before use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(b) The Filing Objection Letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(b) A filing submitted via an email system by an agency title insurance producer using an escrow service.

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.

Agreement Authorization Information

| Agency head or designated, and title: | Steve Gooch, Public Information Officer | Date: 10/20/2021 |

R592. Insurance, Title, and Escrow Commission.


R592-15-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404, which requires the Commission to make rules related to title insurance.


1. The purpose of this rule is to establish procedures for filing a Schedule of Minimum Charges for Escrow Services pursuant to Section 31A-19a-209.

2. This rule applies to an agency title insurance producer, an individual title insurance producer, or a title insurance company.


1. The department requires that the documents described in this section shall be used for all filings, and are available on the department's website, http://www.insurance.utah.gov:

(a) "Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer";

(b) "Schedule of Minimum Charges for Escrow Services."


1. In addition to the definitions of Sections 31A-1-301, 31A-2-402, and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

Terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-19a-102. Additional terms are defined as follows:

1. Additional escrow services means escrow settlement services that are rendered in excess of the escrow settlement services not specifically shown in the minimum escrow charges listed in the Schedule of Minimum Charges for Escrow Services.

2. Certification means a statement that a filing is in compliance with Utah laws and rules.

3. Charge means a dollar amount charged for a service rendered by a title insurance company, an agency title insurance producer, or an individual title insurance producer.


5. Electronic filing or file electronically means:

(a) A filing submitted via the internet by a title insurer using the System for Electronic Rate and Forms Filings (SERFF); or

(b) A filing submitted via an email system by an agency title insurance producer.

NOTICES OF PROPOSED RULES

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22

1. [A title insurer, agency title insurance producer, or individual title insurance producer who is not an employee of a title insurer or who is not designated to an agency title insurance producer] The following shall electronically file a Schedule of Minimum Escrow Service Charges:
   (a) a title insurer;
   (b) an agency title insurance producer; and
   (c) an individual title insurance producer who is:
      (i) not an employee of a title insurer; or
      (ii) not designated to an agency title insurance producer.

2. Only an individual who is authorized to act on behalf of the insurer, agency title insurance producer or individual title insurance producer can [a title licensee may submit a filing.]

3. (a) An initial Schedule of Minimum Charges for Escrow Services filing is a file and use filing and is effective the day [the initial schedule] is filed.
   (b) A revised Schedule of Minimum Charges for Escrow Services filing is a file before use filing and is effective:
      (i) 30 [calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed; or
      (ii) a date specified by the filer that is later than 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed.

4. [All] Each filing[s] must be submitted as an electronic filing via:
   (a) email; or
   (b) SERFF.

5. [Email Filing]—A complete email filing consists of the following:
   (a) an email with a title showing the name of naming the filer and stating that it is an escrow rate filing in the title of the email;
   (b) [a complete Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer, containing the following items:]
      (i) a complete filing description in the following order:
         (A) Certification.
            (I) A filer [must] shall certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
         (II) B] The filing shall include the following statement [must be included:] in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-15 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES."
      (III) A filing will be rejected if the certification is false, missing, or incomplete.
      (IV) A certification that is false may subject the licensee to administrative action.
   (b) indicating if the filing is:
      (I) a new filing; or
      (II) replacing or modifying a previous submission, describing the changes;
      (III) previously rejected, with reasons for rejection and previous filing's submission date; or
      (IV) previously objected to or prohibited, with reasons for resubmission;
   (c) a Schedule of Minimum Charges for Escrow Services, completed as follows:
      (i) all [each blank field[s] must be completed;]
      (ii) if a listed service is not performed by a title licensee, the field must show "N/A" or "Not Applicable"; and
      (iii) [The Schedule of Minimum Charges for Escrow Services must not be altered;]
   (d) a Letter of Authorization.
      (i) When the filer is not [the title licensee, a Letter of Authorization from the title licensee must be attached] shall be included with the filing.
      (ii) The title licensee [remains] is responsible for [making sure] ensuring that the filing is in compliance with Utah laws and rules.
      (e) [As required by subsection] Under Subsection 31A-19a-203(1)(e)(i), the rate filing fee [must] shall be received by the department within five days of the electronic submission or the filing will be rejected.
   (6) [SERFF Filing] A complete SERFF filing consists of the following:
(4) Other services [which are not specifically listed on the Schedule of Minimum Charges for Escrow services may be rendered provided if a justifiable charge is made].

(1) (When corresponding with the department, provide the following information to identify the original filing: To identify the original filing, the following information shall be provided:
(a) type of filing;
(b) date of filing; and
(c) submission method [e.g., paper or email].
(2) A filer can request the status of its filing 60 days after the filing date.

(1) A response to a Filing Objection Letter shall include:
(a) a cover letter identifying the changes made; and
(b) revised documents with all changes highlighted.
(2) (a) An Order to Prohibit Use becomes final 15 days after the date of the Order.
(b) Use of the filing shall be discontinued not later than the date specified in the Order.
(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.
(d) Once the Order to Prohibit Use has been issued, a new filing is required if the [company] title licensee chooses to make the requested changes addressed in the original Filing Objection Letter. The new filing must reference the previously prohibited filing.

A person found to be in violation of this rule shall be subject to penalties under Section 31A-2-308.

The commissioner will begin enforcing this rule 45 days from the effective date of this rule.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable. If any provision of this rule, Rule R592-15, 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: title escrow filings
Date of Last Change: 2021[November 2, 2018]
Notice of Continuation: March 30, 2021
Authorizing, and Implemented or Interpreted Law: 31A-2-404
Agency Information
1. Department: Insurance
Agency: Title and Escrow Commission
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

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. 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>
</tbody>
</table>

General Information
2. Rule or section catchline:
R592-16. Prohibited Escrow Settlement Closing Transactions

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) covered a number of minor issues that needed to be amended. The Title and Escrow Commission approved these changes in an 10/18/2021 meeting by a vote of 3 to 0.

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 this rule text more in line with current rulewriting standards, while others are changes to make the language of this rule more clear. Section R592-16-6 is being removed because this rule is already being enforced, and the new Section R592-16-5 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:

Please address questions regarding information on this notice to the agency.
R592. Insurance, Title and Escrow Commission.

R592-16.1. Authority.
This rule is promulgated by the Title and Escrow Commission pursuant to [Section-Subsection 31A-2-404(2)], which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer or individual title insurance producer.

R592-16.2. Purpose and Scope.
(1) The purpose of this rule is to identify certain escrow practices involving two or more [back-to-back] back-to-back sales and purchases of the same parcel of real property where funds from the final purchaser are received by the initial seller despite having no contractual privity, which the Commission finds may violate the Insurance Code or rules, and therefore it is necessary to identify and prohibit such conduct [Sections 31A-23a-406 and R592-6-4].
(2) These practices include sales and purchases of the same parcel of real property where funds from the final purchaser are received by the initial seller despite having no contractual privity and those where no statutory authority exists for the title insurer, agency title insurance producer, or individual title insurance producer to conduct one or more of such escrows under Section 31A-23a-406 and Rule R592-6-4(5).
(3) This rule applies to all title insurers, agency title insurance producers, individual title insurance producers, and all employees, representatives, and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor:
   (a) a title insurance company;
   (b) an agency title insurance producer;
   (c) an individual title insurance producer; and
   (d) an employee, representative, or any other party working for or on behalf of a title insurance company, an agency title insurance producer, or an individual title insurance producer, whether as a full-time or part-time employee or as an independent contractor.

R592-16.3. Definitions.
[For the purpose of this rule the Commission adopts the definitions set forth in Section 31A-1-301 and the following terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402. Additional terms are defined as follows:
(1) "Land flip" means two or more escrows involving real property where the following or similar circumstances exist:
   (a) [Buyer B contracts with Seller A to buy a parcel of real property] A agrees to sell real property to B;
   (b) [Buyer B then contracts with Buyer C to sell the same parcel of real property] B then agrees to sell the same real property to C; and
   (c) [Buyer B anticipates buying and selling the same parcel of real property] B plans to buy from A and sell to C.

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 31A-2-404(2)

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

A) Comments will be accepted until: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021
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: 10/20/2021

[Title insurers, agency title insurance producers, and individual title insurance producers are permitted to] A title insurance company, an agency title insurance producer, or an individual title insurance producer may not conduct escrow[s] involving a land flip [if unless:

(1) each real estate transaction stands on its own; and[the following conditions are met:]

(4)2] [Buyer B, in the transaction with Seller A, must use funds] the funds used in each transaction are separate and distinct from the funds used [by Buyer C as part of the transaction between Buyer B and Buyer C] in a subsequent transaction.

R592-16-5. [Prohibited Escrows of Flip Transactions.

Except as allowed under R592-16-4, title insurers, agency title insurance producers, and individual title insurance producers are prohibited from conducting any escrows involving a land flip.

R592-16-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-16-7. [Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.] If any provision of this rule, Rule R592-16, 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: escrow insurance flip
Date of Last Change: 2021[December 8, 2014]
Notice of Continuation: November 25, 2019
Authorizing, and Implemented or Interpreted Law: 31A-2-404(2)

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<tbody>
<tr>
<td>Name:</td>
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<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
<tr>
<td>Steve Gooch</td>
</tr>
</tbody>
</table>

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

General Information

2. Rule or section catchline:
R592-17. Requirements for alinterest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits

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. The Title and Escrow Commission approved these changes in an 10/18/2021 meeting by a vote of 3 to 0.

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 this rule text more in line with current rulewriting standards, while others are changes to make the language of this rule more clear. Section R592-17-6 is being removed because penalties are already provided for in statute, and the new Section R592-17-5 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:

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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**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 31A-2-404(2)

**Public Notice Information**

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

A) **Comments will be accepted until:** 12/15/2021

10. **This rule change MAY become effective on:** 12/22/2021

**Agency Authorization Information**

Agency head or designee, and title: Steve Gooch, Public Information Officer

Date: 10/20/2021

R592. Insurance, Title and Escrow Commission. R592-17. Requirements for an Interest Bearing Account[s] Used by Title Insurance Agencies for Trust Fund Deposits. R592-17-1. Authority. This rule is promulgated by the Title and Escrow Commission pursuant to Subsection[31A-2-201(1) and] 31A-2-404(2) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23a-409(2)(B).
R592-17-2. Purpose and Scope.

This rule specifies the characteristics of a trust account. The purpose of this rule is to specify the type of depository account that may be used by a title insurance agent to deposit trust funds, an agency title insurance producer, or an individual title insurance producer shall use for depositing trust funds.

(1) This rule applies to:
   (a) a title insurance company;
   (b) an agency title insurance producer; and
   (c) or an individual title insurance producer;
   (d) an employee, representative, or any other party working for or on behalf of a title insurance company, an agency title insurance producer, or an individual title insurance producer, whether as a full-time or part-time employee or as an independent contractor.


This rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities, whether as a full-time or part-time employee, or as an independent contractor.

R592-17-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23a-102 and the following terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-23a-102. Additional terms are defined as follows:

(1) “Demand deposit account” means a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request at any time without advance notice.

(2) “Depositor” means a person that has deposited trust funds, in a qualifying trust account, funds that are held in trust in connection with a real estate transaction.

(3) “Depository institution” means a depository institution as defined in Section 7-1-103.

(4) “Money market mutual fund” means a mutual fund that:
   (a) invests in highly liquid, near-term instruments; and
   (b) maintains a par value of $1 per share.

(5) “Repurchase agreement” means an agreement in which a bank, depository institution agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security, or other asset at a later date at a specified price.

(46) “Sweep account” means a demand deposit account subject to an agreement authorizing the bank or depository institution to withdraw funds from the account in excess of funds exceeding that specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand deposit account when needed, to pay checks presented for payment or other requests for withdrawal.

(47) “Trust account” means an account denominated as a trust account in which the depositor is a trustee.

(48) “Money market mutual fund” means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of $1 per share.

R592-17-$54. Account Requirements.

(1) Authority to Retain Earnings on Funds Held in Trust.

Subsection 31A-23a-102(1) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the commissioner, or by a contract between the trustee and the person on whose behalf the funds are held.

(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds, held in trust, comply with the requirements of this rule.

(3) Records Required. Each title insurance agency must:
   (a) a title insurance company, an agency title insurance producer, and an individual title insurance producer shall retain adequate records of [all] each deposit[es] in a trust account, including those utilizing a sweep feature, or a sweep account to establish individual account balances for [all] each person[es] whose funds are held in trust.

(442) [Qualifying Accounts.] Funds subject to this rule must be deposited in:
   (a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or
   (b) a sweep account that meets all of the following qualifications:
      (i) funds are initially deposited into a federally insured demand deposit account;
      (ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase depositary institution purchases;
      (A) U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank, subject to a repurchase agreement with the bank, between the depositor and the depository institution;
      (B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or agencies of the U.S. Government;
      (iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interests, at any time, at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(53) [Obligation of Depositor for Losses.] A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(64) [Authorization and Disclosure Obligation.] A [any] depositor who uses an account described in Subsection R592-17-[54](42)(b).

(a) receive written authorization from [those persons on whose behalf the funds are deposited] each trust beneficiary stating that the depositor may receive [all] any earnings [which may be] that are realized from the trust fund deposit; and

(b) provide full written disclosure to [all persons on whose behalf the funds of deposited] each trust beneficiary explaining the characteristics of a sweep account deposit as described in Subsection R592-17-[54](42)(b).

R592-17-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their title insurance licenses or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.
RULES 17-7[5.  Severability.
[If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.][5. If any provision of this rule, Rule 592-17, 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, title
Date of Last Change: 2021
Notice of Continuation: March 11, 2021
Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a); 31A-2-201(1); 31A-23a-409(2)(b)

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>
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<td>Filing ID</td>
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</table>

Agency Information

1. Department: Labor Commission
2. Agency: Industrial Accidents
3. Room no.: 3rd Floor
4. Building: Heber M Wells Building
5. Street address: 160 E 300 S
6. City, state and zip: Salt Lake City, UT 84111
7. Mailing address: PO Box 146600
8. City, state and zip: Salt Lake City, UT 84114-6600
9. Contact person(s):
   - Name: Ron Dressler
   - Phone: 801-530-6841
   - Email: rdressler@utah.gov

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

General Information

2. Rule or section catchline:
R612-300-4. General Method for Computing Medical Fees
3. Purpose of the new rule or reason for the change
   (Why is the agency submitting this filing?)
   The purpose of this amendment is to adopt, with modifications, the Optum 2021 Essential Resource-Based Relative Value Schedule (RBRVS) 2021 1st Quarter Update; and to adjust procedures for certain medical specialties.

4. Summary of the new rule or change
   (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
   The amendment incorporates by reference current versions of the RBRVS and adjusts the reimbursement amount for "Other Surgery".

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. National Council on Compensation Insurance (NCCI) has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this rule is a very small percentage of the overall workers’ compensation cost – less than one tenth of one percent.

B) Local governments:
There is no anticipated cost or savings to local governments. NCCI has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this rule is a very small percentage of the overall workers’ compensation cost – less than one tenth of one percent.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. NCCI has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this rule is a very small percentage of the overall workers’ compensation cost – less than one tenth of one percent.

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. NCCI has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this rule is a very small percentage of the overall workers’ compensation cost – less than one tenth of one percent.

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 persons other than small businesses, non-small businesses, state or local government entities. NCCI has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this
rule is a very small percentage of the overall workers compensation cost – less than one tenth of one percent.

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 person. NCCI has told the Commission that there will be no fiscal impact to any stakeholders since the specific conversion factor that is being increased in this rule is a very small percentage of the overall workers' compensation cost – less than one tenth of one percent.

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 should be no fiscal impact on businesses by adopting this rule change. NCCI has determined that because the increase is so small the impact to the overall workers' compensation cost will be less than one tenth of one percent. Jaceson R. Maughan, 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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| 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         |        |        |        |
| 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 Commissioner of the Labor Commission, Jaceson R. Maughan, has approved this impact analysis.

Citation Information

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

Section 34A-1-104 | Section 34A-2-201

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>
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<tbody>
<tr>
<td>Official Title of Materials Incorporated (from title page)</td>
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<td>Issue, or version</td>
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B) This rule adds, updates, or removes the following title of materials incorporated by references:

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<tr>
<td>Official Title of Materials Incorporated (from title page)</td>
</tr>
<tr>
<td>Publisher</td>
</tr>
<tr>
<td>Issue, or version</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: 12/15/2021

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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Jaceson R. Maughan, Commissioner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>10/29/2021</td>
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</table>

#### R612-300. Workers’ Compensation Rules - Medical Care.
#### R612-300-4. General Method For Computing Medical Fees.


B. Medical fees calculated according to the RBRVS relative value unit assigned by the RBRVS to a CPT code and then multiplying workers shall be computed by determining the relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in [4] Subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in [4] Subsection C. of this rule to calculate payments for medical care provided to injured workers.

### Summary of the new rule or change

The language found in Subsection 53-13-103(1)(b)(xi) that provided rulemaking authority was very broadly written. The language in the current version of this rule that addresses application and criteria for certification of a law enforcement agency of a private college or university, and the denial or revocation of the certification status is minimal. The language in S.B. 191 (2021) provides very specific rulemaking authority, which is reflected in the new language replacing the previous version of this rule.

**Notice of Continuation:** February 8, 2018

Authorizing, and Implemented or Interpreted Law: 34A-1-104; 34A-2-201

### NOTICES OF PROPOSED RULES

#### TYPE OF RULE: Repeal and Reenact

| Utah Admin. Code Ref (R no.): | R698-4 | Filing ID 54036 |

### Agency Information

1. **Department:** Public Safety
2. **Agency:** Administration
3. **Building:** Calvin Rampton Complex
4. **Street address:** 4501 S 2700 W, 1st Floor
5. **City, state and zip:** Salt Lake City, UT 84119-5994

### Contact person(s):

- **Name:** Kim Gibb
- **Phone:** 801-556-8198
- **Email:** kgibb@utah.gov

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

### General Information

1. **Rule or section catchline:**

   R698-4. Certification of the Law Enforcement Agency of a Private College or University

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

   (Why is the agency submitting this filing?):

   This rule is being proposed as a result of the passage of S.B. 191 from the 2021 General Session.

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):

   Prior to the passage of S.B. 191 (2021), the statutory language found in Subsection 53-13-103(1)(b)(xi) that provided rulemaking authority was very broadly written. The language in the current version of this rule that addresses application and criteria for certification of a law enforcement agency of a private college or university, and the denial or revocation of the certification status is minimal. The language in S.B. 191 (2021) provides very specific rulemaking authority, which is reflected in the new language replacing the previous version of this rule.

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**UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22**

127
The new language specifies the process for certification of a private law enforcement agency, methods for obtaining, review, use, and protection of records; requirements for the conduct of a formal hearing; verification of compliance with terms of probation; audit procedures; contents of policies and procedures manuals; and requirements for operation of a private law enforcement agency.

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 impact on state government revenues or expenditures because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing. There are not any fees associated with the certification of a law enforcement agency for a private college or university.

B) Local governments:

This rule change is not expected to have any impact on local governments’ revenues or expenditures because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing. There are not any fees associated with the certification of a law enforcement agency for a private college or university.

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

This rule change is not expected to have any impact on small businesses’ revenues or expenditures because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing. There are not any fees associated with the certification of a law enforcement agency for a private college or university.

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

This rule change is not expected to have any impact on non-small businesses’ revenues or expenditures because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing. There are not any fees associated with the certification of a law enforcement agency for a private college or university.

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

This rule change is not expected to have any impact on revenues or expenditures for persons other than small businesses, non-small businesses, state or local government entities because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing.

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 this rule.

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

This rule change is not expected to have any impacts on revenues or expenditures on businesses because it only outlines the requirements that must be met for the law enforcement agency of a private college or university to become certified, in addition to requirements for operation, auditing, criteria for decertification, and requirements for the conduct of a formal hearing. Jess L. Anderson, Commissioner

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

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College or university has been certified by the commissioner of public safety, a law enforcement agency of a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the commissioner of public safety in accordance with rules of the Department of Public Safety (department). The purpose of this rule is to establish the criteria the law enforcement agency of a private college or university must meet in order to be certified.

R698-4-2. Authority.
This rule is authorized by Subsection 53-13-103(1)(b)(xii).

R698-4-3. Application for Certification.
The law enforcement agency of a private university or college wishing to be certified shall make written application for certification to the commissioner of public safety.

R698-4-4. Criteria for Certification.
The following criteria must be met in order for the law enforcement agency of a private college or university to be eligible for certification:

1. In accordance with Subsections 53-6-202(4)(a) and 53-6-205(1)(a), the law enforcement agency's officers must successfully complete the basic course at a certified academy, or successfully pass a state certification examination prior to exercising peace officer authority.
2. The law enforcement agency must pay for the cost of the basic course training received by its officers.
3. In accordance with Subsection 53-6-202(4)(a), the law enforcement agency's officers must satisfactorily complete annual certified training of not less than 40 hours.
4. The law enforcement agency's officers shall be subject to all of the requirements of Title 53, Chapter 6, Part 2.
5. The law enforcement agency's officers may exercise peace officer authority beyond the geographical limits of the private college or university only in accordance with Section 77-9-3.
6. The law enforcement agency's policy and procedure manual shall include a provision requiring its officers to comply with Section 77-9-3.
7. The law enforcement agency's policy and procedure manual shall include a provision requiring its officers to comply with the Law Enforcement Code of Ethics as published by the International Association of Chiefs of Police in the "Police Chief Magazine" (1992).
8. The law enforcement agency shall comply with the reporting requirements of the statewide crime reporting system established by the department pursuant to Subsection 53-10-202(2).
9. The private college or university sponsoring the law enforcement agency must be currently accredited by an appropriate accreditation agency recognized by the United States Department of Education.

R698-4-5. Denial or Revocation of Certification Status.
(1) Certification of the law enforcement agency of a private college or university may be denied or revoked for failure to meet the certification criteria set forth in this rule.
(2) Action to deny or revoke a certification shall be considered a formal adjudicative proceeding in accordance with the Administrative Procedures Act, Title 63, Chapter 46b.
(3) A private college or university which is denied certification, or which is notified that the commissioner of public safety intends to revoke its certification, is entitled to a formal hearing before the commissioner or the commissioner's designee.

R698-4-1. Authority.
This rule is authorized by Section 53-19-103.
R698-4-2. Purpose.
The purpose of this rule is to establish criteria and requirements for the certification and regulation of a private law enforcement agency.

R698-4-3. Definitions.
(1) Terms used in this rule are defined in Sections 53-1-102, 53-13-103, and 53-19-102.
(2) In addition:
   (a) "ALJ" means administrative law judge; and
   (b) "GRAMA" means Title 63G, Chapter 2, Government Records Access and Management Act.

R698-4-4. Application for Certification.
A private law enforcement agency wishing to be certified shall make written application for certification to the commissioner on a form approved by the commissioner that includes:
   (1) information required under Subsection 53-19-201(4); and
   (2) an affirmation that:
      (a) each officer employed by the private law enforcement agency is certified pursuant to Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; and
      (b) each dispatcher employed by the private law enforcement agency is certified pursuant to Title 53, Chapter 6, Part 3, Dispatcher Training and Certification Act.

(1) A private law enforcement agency shall provide records requested by the commissioner or the commissioner's designee in accordance with Section 53-19-202.
(2) A request for records shall be:
   (a) in writing;
   (b) sent via email or first class mail to the chief of the private law enforcement agency;
   (c) describe with specificity the records subject to the request; and
   (d) specify the deadline for producing the records, which shall be not less than 30 days from the date of the request.
(3) The commissioner or the commissioner's designee shall ensure that records obtained from a private law enforcement agency are subject to the same restrictions on disclosure imposed by the originating entity.
(4) Records obtained from a private law enforcement agency shall be reviewed by the commissioner or the commissioner's designee and may be used in connection with:
   (a) an audit;
   (b) an investigation being conducted by the commissioner or the commissioner's designee; or
   (c) an administrative proceeding in which the commissioner is a party.
(5) The commissioner may issue subpoenas for records and witnesses in connection with an audit or an investigation.
(6) Objection to a subpoena issued by the commissioner shall be made pursuant to Rule 45 of the Utah Rules of Civil Procedure.

R698-4-6. Requirements for the Conduct of a Formal Hearing.
(1) In the event that formal action is taken against a private law enforcement agency, the private law enforcement agency or the private institution of higher education may request a formal hearing as described in Section 53-19-302.
(2) Pre-hearing discovery shall be limited to the contents of the commissioner's entire investigative file in both digital and hard-copy format, including each document, case file, note, document from other agencies and divisions such as POST and SBI, and internal communication arising out of or related to the investigation that is not privileged, and shall be provided to the private law enforcement agency within 30 days of the receipt of a written request for a formal hearing.
(3) No depositions, interrogatories, or requests for admissions shall be permitted.
(4) The parties may issue subpoenas for records and witnesses following issuance of a notice of agency action.
(5) Objection to a subpoena shall be made pursuant to Rule 45 of the Utah Rules of Civil Procedure.
(6) A formal hearing under this section shall be conducted in accordance with Section 63G-4-206. In addition:
   (a) the hearing and any related proceedings shall be conducted at the Peace Officer Standards and Training facility, unless the facility is unavailable;
   (b) proceedings may be conducted virtually upon agreement of each party, or if the ALJ determines that a virtual proceeding is necessary due to health or safety concerns with an in person proceeding;
   (c) the ALJ may close the hearing or other proceeding if the ALJ finds that it is necessary to ensure a fair and impartial hearing or proceeding;
   (d) the ALJ may exclude any individual who the ALJ determines is disrupting or impeding the hearing or related proceeding;
   (e) the Utah Rules of Civil Procedure shall apply, except as set forth in these rules; and
   (f) the ALJ may entertain a motion for summary judgement by either party.

R698-4-7. Verification of Compliance with Terms of Probation.
(1) When a private law enforcement agency is placed on probation, or an existing probation period is extended, as authorized under Title 53, Chapter 19, Certification of Private Law Enforcement Agency, the commissioner shall provide the private law enforcement agency with the terms of probation in writing. Thereafter, the commissioner or the commissioner's designee shall meet with the private law enforcement agency periodically to ensure compliance with the terms of probation.
(2) The commissioner or the commissioner's designee may conduct interviews, and may request records in accordance with Section R698-4-5 that are related to the terms of the probation, to verify compliance with the terms of probation.

R698-4-8. Audit Procedures.
(1) This rule does not apply to audits conducted by the legislative auditor general or the state auditor. The legislative auditor general and the state auditor shall conduct any audit of a private law enforcement agency in accordance with statutes, rules, and policies applicable to audits conducted by those authorities.
(2) The commissioner or the commissioner's designee may conduct an audit of a private law enforcement agency pursuant to Section 53-19-204.
(3) The commissioner or the commissioner's designee shall provide written notice of the audit to the chief of the private law enforcement agency, which shall identify:
(a) the intended scope of the audit;
(b) the anticipated timeframe for the audit;
(c) whether the audit will involve interviews or the production of records or other written information.
(4) The commissioner or the commissioner's designee shall schedule an opening conference with the private law enforcement agency, which may be conducted in person at the private law enforcement agency's location or by virtual means.
(5) A private law enforcement agency shall provide information as requested by the commissioner or the commissioner's designee in connection with an audit in accordance with Section R698-4-5.
(6) The commissioner or the commissioner's designee may conduct interviews during an audit after giving written notice to the private law enforcement agency of the individuals to be interviewed and the topics to be addressed no less than seven days before the date of the interview.
(a) The commissioner or the commissioner's designee may obtain information during audit interviews related to the private law enforcement agency to ensure compliance with the requirements of Title 53, Chapter 19, Certification of Private Law Enforcement Agency.
(b) If audit interviews are recorded by audio or video means, a copy of each recording shall be provided to the private law enforcement agency before the audit is concluded.
(7) After conducting an audit, the commissioner or the commissioner's designee shall submit a preliminary draft audit report directly to the chief of the private law enforcement agency and hold an exit conference with the private law enforcement agency to discuss the preliminary draft audit report.
(8) Within 20 days of the exit conference, the private law enforcement agency shall:
(a) provide a written response or comment on the preliminary draft audit report to the commissioner or the commissioner's designee; or
(b) submit a request for an extension to submit a written response or comment with a justification for the request and the amount of time requested.
(9) After receipt of a written response or comment on the preliminary draft audit report from the private law enforcement agency, the commissioner or the commissioner's designee shall:
(a) incorporate the private law enforcement agency's written response or comment into the draft audit report;
(b) prepare any concluding comments; and
(c) issue the final audit report at the conclusion of the audit.
(10) Within ten days of the issuance of the final audit report, a copy of the final audit report shall be provided to the chief of the private law enforcement agency.
(11) Any public release of a final audit report shall comply with conditions specified by state, federal, and other laws and regulations and governing the protection of personally identifiable information.
The following written policies shall be included in the private law enforcement agency's policy and procedure manuals:
(1) hiring;
(2) internal affairs investigations;
(3) requirement to provide Garrity warnings to officers and dispatchers during internal administrative investigation interviews;
(4) compliance with division requirements;
(5) information access, including access to record management systems;
(6) information sharing procedures and restrictions with other departments or personnel within the private law enforcement agency's associated private institution of higher education including the Title IX offices, and if applicable, the student conduct office;
(7) requirement to comply with GRAMA and procedures for responding to GRAMA requests;
(8) monitoring electronic database use;
(9) required yearly training;
(10) career development;
(11) organizational structure and chain of command;
(12) required reporting, including to national crime reporting systems and Clery Act reporting;
(13) compliance with applicable Equal Employment Opportunity and Americans with Disabilities Act standards; and
(14) applicability of Section 77-9-3, Authority of Peace Officer of this State Beyond Normal Jurisdiction.
R698-4-10. Requirements for Operation of a Private Law Enforcement Agency.
(1) In accordance with Subsections 53-6-202(4)(a) and 53-6-205(1)(a), the private law enforcement agency shall ensure that its officers successfully complete the basic course at a certified academy, or successfully pass a state certification examination prior to exercising peace officer authority.
(2) The private law enforcement agency shall pay for the cost of the basic course training received by its officers at POST Academy.
(3) The private law enforcement agency shall ensure that its officers satisfactorily complete annual certified training of not less than 40 hours in accordance with Subsection 53-6-202(4)(a).
(4) The private law enforcement agency's officers shall be subject to the requirements of Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act.
(5) The private law enforcement agency's dispatchers shall be subject to the requirements of Title 53, Chapter 6, Part 3, Dispatcher Training and Certification Act.
(6) The private law enforcement agency shall:
(a) develop, implement, and enforce policies and procedures consistent with other Utah law enforcement agencies;
(b) ensure that officers are trained to understand their duties and responsibilities pursuant to the agency's policies and procedures;
(c) ensure that policies and procedures define terms clearly, comply with applicable law, and comport with best practices;
(d) apply policies uniformly and hold officers accountable for compliance;
(e) review each policy or procedure no later than six months after it is implemented, and annually thereafter, to ensure that policies and procedures provide effective direction to personnel and remain consistent with best practices and current law;
(f) review and revise policies and procedures as necessary upon notice of a policy deficiency identified during an audit;
(g) within 30 days of issuing a policy or procedure, ensure and document that any relevant personnel have received and read the new policies or procedures, and are aware of the requirement that;
(i) each officer or employee must report conduct that would constitute a violation of Section 53-6-211, and will be subject to discipline for failure to do so; (ii) supervisors of each rank are accountable for identifying and responding to policy or procedure violations by personnel under their command; and (iii) personnel will be held accountable for policy and procedure violations; and (h) within 90 days of issuing a new or revised policy or procedure, implement training on the new policies and procedures to ensure that officers and employees understand and can perform their duties pursuant to policy.

(7) The private law enforcement agency shall comply with the reporting requirements of the statewide crime reporting system established by the department pursuant to Subsection 53-10-202(2).

(8) The private college or university sponsoring the private law enforcement agency must be currently accredited by an agency that would constitute a violation of Section 53-6-211. The chief shall immediately notify the Department of Education. The chief shall immediately notify the law enforcement agency must be currently accredited by an agency that would constitute a violation of Section 53-6-211.

KEY: colleges, law enforcement officer certification, private law enforcement agency

Date of Last Change: 2021[March 5, 1999]
Notice of Continuation: February 14, 2019
Authorizing, and Implemented or Interpreted Law: 53-13-103(4)(b)(iii)

NOTICE OF PROPOSED RULE

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Agency Information

<table>
<thead>
<tr>
<th>1. Department: Public Safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency: Driver License</td>
</tr>
<tr>
<td>Street address: 4501 S 2700 W</td>
</tr>
<tr>
<td>City, state and zip: Salt Lake City, UT 84129</td>
</tr>
<tr>
<td>Mailing address: PO Box 144501</td>
</tr>
<tr>
<td>City, state and zip: Salt Lake City, UT 84114-4501</td>
</tr>
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</table>

Contact person(s):

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kim Gibb</td>
<td>801-556-8198</td>
<td><a href="mailto:kgibb@utah.gov">kgibb@utah.gov</a></td>
</tr>
<tr>
<td>Tara Zamora</td>
<td>801-964-4483</td>
<td><a href="mailto:tarazamora@utah.gov">tarazamora@utah.gov</a></td>
</tr>
<tr>
<td>Britani Flores</td>
<td>801-884-8313</td>
<td><a href="mailto:bflores@utah.gov">bflores@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:
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule is to implement legislative changes for H.B. 352 passed in the 2021 General Session, as well as removing procedural information not integral to the intent of 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 filing establishes a process for homeless applicants to be able to provide proof of residency to obtain an identification card and fee waiver by providing a verification of homelessness from a homeless services provider that has been approved by the Department of Workforce Services. Sections of the existing rule that included procedural information that are no longer applicable to this rule have been removed. This rule has been completely restructured to ensure the information presented is clearer.

Fiscal Information

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

A) State budget:
The rule change is not expected to have any impact on state government revenues or expenditures because this rule is utilizing the resources that are already in place.

B) Local governments:
The rule change is not expected to have any impact on local governments’ revenues or expenditures because this rule is utilizing the resources that are already in place.
C) Small businesses ("small business" means a business employing 1-49 persons):
The rule change is not expected to have any impact on small businesses’ revenues or expenditures because this rule is utilizing the resources that are already in place.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The rule change is not expected to have any impact on non-small businesses’ revenues or expenditures because this rule is utilizing the resources that are already in place.

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 impact on non-small businesses’ revenues or expenditures because this rule is utilizing the resources that are already in place.

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 this rule.

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

This rule change will not have an impact on businesses. The rule is being restructured to make it easier to follow, in addition to incorporating language that allows for a homeless service provider verified by the Department of Workforce Services to provide acceptable documentation for an applicant to use as verification of a Utah residence address when applying for an identification card. Jess L. Anderson, Commissioner

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

<table>
<thead>
<tr>
<th>Regulatory Impact Table</th>
<th>Fiscal Cost</th>
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<td>Other Persons</td>
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<td></td>
</tr>
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</table>

10. This rule change MAY become effective on: 12/22/2021

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.
R708. Public Safety, Driver License.
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.

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Title 53, Chapter 3.

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R708-41-1. Authority.

This rule is authorized by Section 53-3-104.

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The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

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(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or inability to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (6)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee. Failure to present acceptable documentation required for the verification of illegal presence may result in the denial of a license certificate or identification card.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) United States citizen;

(ii) National of the United States of America, or

(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(ii) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(iii) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(iv) Certificate of Naturalization issued by the United States Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(v) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity;

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited term driver license, limited term CDL or limited term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(9) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

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UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22
(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;
(ii) Pending or approved application for asylum in the United States;
(iii) Admission into the United States as a refugee;
(iv) Pending or approved application for temporary protected status in the United States;
(v) Approved deferred action status;
(vi) Pending application for adjustment of status to legal permanent resident or conditional resident; or
(vii) Conditional permanent resident alien.
(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:
(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:
   (i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;
   (ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;
   (iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;
   (iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;
   (v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;
   (vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;
   (vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or
   (viii) Alternate documents may be accepted if approved by DHS or the division director or designee.
(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited term driver license, limited-term CDL or limited-term ID card with verification from SAVE:
   (i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;
   (ii) Unexpired foreign passport with documentary evidence of the applicant’s most recent admittance into the United States;
   (iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:
      (A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;
      (B) Pending or approved application for asylum in the United States;
      (C) Admission into the United States as a refugee;
      (D) Pending or approved application for temporary protected status in the United States;
      (E) Approved deferred action status;
      (F) Pending application for adjustment of status to legal permanent resident or conditional resident; or
   (g) Conditional permanent resident alien.
(10) "SAVE Verification" means a document issued by the U.S. Federal government that has been signed or, if the Social Security card is not available, the applicant may present one of the following documents which contain the applicant’s name and SSN:
   (i) W-2 form;
   (ii) SSA-1099 form;
   (iii) Non SSA-1099 form;
   (iv) Pay stub showing the applicant’s name and SSN; or
   (v) Other documents approved by DHS or the division director or designee.
(11) "Social Security Number Ineligibility Evidence" means a letter from the Social Security Administration indicating the individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.
(12) "Social Security Number Ineligibility Evidence" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.
(13) "Social Security Number Ineligibility Evidence" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.
(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.
(15) "U.S. Citizen" means a native or naturalized person of the United States of America.
(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency’s address as the Utah residence address of the applicant.
(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant’s Utah residence address has not been recorded by the division or has changed from what is recorded on the division’s database, two documents which display the applicant’s name and principle Utah residence address including:
   (a) Bank statement (dated within 60 days);
   (b) Court documents;
   (c) Current mortgage or rental contract;
   (d) Major credit card bill (dated within 60 days);
   (e) Property tax notice (statement or receipt dated within one year);
   (f) School transcript (dated within 90 days);
   (g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;
   (h) Valid Utah vehicle registration or title;
(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (9)(b); or
(b) One identity document as outlined in definition (6)(a); or
(c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and
(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and
(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):
(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original limited-term CDL must provide their Social Security card; and
(d) Evidence of their current Utah residence address as outlined in definition (17); and
(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country if younger than 19 years of age.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:
(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
(b) One identity document as outlined in definition (6)(a); or
(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and
(d) Evidence of their current Utah residence address as outlined in definition (17);
(7) An individual who is applying for a duplicate of a limited- 
term license certificate, a limited-term provisional license certificate or 
a limited-term CDL certificate must provide the following documents: 
(a) One legal/lawful presence document as outlined in 
definition (9)(b); and 
(b) One identity document as outlined in definition (6)(b) 
unless previously recorded by the division during an application process 
on or after January 1, 2010; and 
(c) Evidence of their SSN as outlined in definition (11), 
unless previously recorded by the division during an application process 
on or after January 1, 2010, or evidence of ineligibility to obtain a SSN 
as outlined in definition (12); and 
(d) Evidence of their current Utah residence address as 
outlined in definition (17); 
(e) Evidence of completion of a course in driver training 
outlined in definition (17); and 
(f) Evidence of their current Utah residence address as 
outlined in definition (17).

(8) An individual who is applying for a Driving Privilege card 
must provide the following documents: 
(a) Two identity documents as outlined in definition (6)(c) for 
undocumented immigrants unless previously recorded by the division 
during an application process on or after January 1, 2010; and 
(b) Evidence of a SSN as outlined in definition (11); or 
evidence of an ITIN as outlined in definition (7); and 
(c) Evidence of their current Utah residence address as 
outlined in definition (17); and 
(d) Evidence of completion of a course in driver training 
approved by the commissioner, or evidence that the individual was 
issued a driving privilege in another state or country if younger than 19 
years of age.

(9) An individual who is applying for a renewal of a Driving 
Privilege card must provide the following documents: 
(a) Two identity documents as outlined in definition (6)(c) for 
undocumented immigrants unless previously recorded by the division 
during an application process on or after January 1, 2010; and 
(b) Evidence of a SSN as outlined in definition (11); or 
evidence of an ITIN as outlined in definition (7); and 
(c) Evidence of their current Utah residence address as 
outlined in definition (17).

(10) An individual who is applying for a duplicate of a 
Driving Privilege card must provide the following documents: 
(a) Two identity documents as outlined in definition (6)(c) for 
undocumented immigrants unless previously recorded by the division 
during an application process on or after January 1, 2010; and 
(b) Evidence of a SSN as outlined in definition (11); or 
evidence of an ITIN as outlined in definition (7); and 
(c) Evidence of their current Utah residence address as 
outlined in definition (17).

(11) An individual who is applying for a limited-term driver 
license for the first time shall be given the opportunity to take the 
knowledge test on the state of Utah traffic laws in the person’s native 
language must provide the following documents: 
(a) One legal/lawful presence document as outlined in 
definition (9)(b)(B) or (C); and 
(b) One identity document as outlined in definition (6)(a)(iv); and 
(c) Evidence of their SSN as outlined in definition (11) or 
evidence of ineligibility to obtain a SSN as outlined in definition (12); and 
(d) Evidence of their current Utah residence address as 
outlined in definition (17); and 
(e) Evidence of completion of a course-in-driver-training 
approved by the commissioner, or evidence that the individual was 
issued a driving privilege in another state or country if the individual is 
under the age of 19.

R708-41-5. Exceptions.

This rule does not apply when issuing driver license 
certificates or identification cards in support of Federal, State, or local 
criminal justice agencies or other programs that require special licensing 
or identification or safeguard the persons or in support of their official 
duties.


All documents provided to the division by an applicant during 
the issuance of a driver license or identification card application as proof 
of identity, proof of lawful residence, proof of SSN, or ineligibility to 
secure a SSN, ITIN, address verification, or proof of name change will 
be imaged and stored in a secure database with controlled access. 
Except that at the applicant's request the information on a U.S. birth 
certificate may be written on the license or identification card 
application rather than scanning the document.

R708-41-1. Purpose.

The purpose of this rule is to:

1. Define acceptable documentation for: 
   (a) a driver license certificate or identification card; 
   (b) honorable or general discharge from the United States 
military; and 
   (c) establishing homelessness as verified by the 
      Department of Workforce Services to prove residency and obtain a 
      fee waiver for an identification card; and 
   (d) create a fee waiver for an identification card; and 

2. Establish procedures for storage and maintenance of 
   those documents pursuant to Title 53, Chapter 3, Uniform Driver 
   License Act.


This rule is authorized by Section 53-3-104.


(1) Terms used in this rule are defined in Section 53-3-102.

(2) In addition:

   (a) "acceptable document" means an original document, or 
       a copy of an original document certified by the issuing agency, that 
       the division shall accept for determining the validity of information 
       submitted in connection with a license certificate or identification 
       card application; 
   (b) "alternate document" means a document that may be 
       accepted when the applicant is unable to present the necessary 
       documents to establish identity or date of birth as required in 
       connection with a license certificate or identification card 
       application; 
   (c) "DHS" means the Department of Homeland Security; 
   (d) "exception process" means a written, defined process 
       for persons who are unable to present all necessary documents and 
       must rely on alternate documents to establish identity, date of birth 
       or U.S. citizenship; 
   (e) "identity document" means an original, government- 
       issued document that contains identifying information about the 
       subject of the document; 
   (f) "full legal name evidence" means the name established 
       on an identity document; 
   (g) "ITIN" means an individual tax identification number; 
   (h) "ITIN evidence" means an official document used to 
       verify an individual's assigned individual tax identification number; 
   (i) "lawful presence or status evidence" means that an individual's 
       presence in the United States does not violate state or federal law; 
   (j) "lawful presence or status evidence" means a document 
       issued by the federal government or approved by DHS, or the
division director or designee, that shows legal presence of an individual;  
(k) "SAVE" means the Systematic Alien Verification for Entitlements system;  
(l) "SAVE verification" means verification of a document issued by the federal government through DHS, SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security;  
(m) "SSN" means a social security number issued by the Social Security Administration;  
(n) "SSN evidence" means an official document used to verify an individual's social security number;  
o) "SSOLV" means the social security online verification system;  
(p) "Utah residence address" means the place where an individual has a fixed permanent home and principal establishment in Utah and where the individual voluntarily resides, that is not for a special or temporary purpose;  
(q) "Utah residence address evidence" means a document that displays the applicant's name and principal Utah residence address;  
r) "veteran indicator" means the word VETERAN added to a driver license certificate or identification card during the application process at the applicant's request upon the applicant providing proof of an honorable discharge or general discharge under honorable conditions from the United States military.

(1) Acceptable forms of identity documents include the following:  
(a) a valid, unexpired United States passport or passport card;  
(b) a certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's state of birth;  
(c) Consular Report of Birth Abroad forms FS-240, DS-1350 or FS-545, issued by the United States Department of State;  
(d) a valid, unexpired Permanent Resident Card;  
(e) a valid, unexpired Conditional Permanent Resident Card;  
(f) a Temporary Stamp Visa or Temporary Admittance Document form I-551;  
(g) a Certificate of Naturalization issued by DHS, form N-550 or form N-570;  
(h) a Certificate of Citizenship, form N-560 or form N-561, issued by DHS;  
(i) a regular driver license, commercial driver license, or identification card that has been issued by the Utah Driver License Division on or after January 1, 2010, which is only acceptable for renewal or duplicate certificates and may provide evidence of both lawful presence and identity;  
(j) an unexpired Employment Authorization Document, or EAD, issued by DHS, form I-766, or form I-688B verified through the SAVE system;  
k) an unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE;  
l) a foreign birth certificate or unexpired foreign passport, including a certified translation if the document is not in English; or  
m) alternate documents may be accepted if approved by DHS or the division director or designee.

R708-41-4(1)(i) in addition to the following:  
(2) In addition to one of the identity documents listed in Subsection R708-41-4(1), individuals applying for a driving privilege card will be required to show one of the following:  
(a) church records;  
(b) court records;  
(c) driver license;  
(d) employee identification card;  
e) insurance identification card;  
(f) matricular consular card issued in Utah;  
g) Mexican voter registration card;  
h) school records;  
i) Utah DPC; or  
j) other evidence considered acceptable by the division director or designee.

R708-41-5 Acceptable Forms of Lawful Presence or Status Evidence.  
Acceptable forms of lawful presence or status evidence include documents listed in Subsections R708-41-4(1)(a) through R708-41-4(1)(l) in addition to the following:  
(1) a document issued by the federal government that verifies lawful entrance into the United States verified through SAVE;  
(2) unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the federal government;  
(3) pending or approved application for asylum in the United States;  
(4) admission into the United States as a refugee;  
(5) pending or approved application for temporary protected status in the United States;  
(6) approved deferred action status; or  
(7) pending application for adjustment of status to legal permanent resident or conditional resident.

R708-41-6 Acceptable Forms of Social Security Number Evidence.  
Acceptable forms of SSN evidence include the following:  
(1) social security card issued by the federal government that has been signed; or  
(2) if the social security card is not available, the applicant may present one of the following documents that contain the applicant's name and SSN:  
(a) W-2 form;  
(b) SSA-1099 form;  
(c) non SSA-1099 form;  
(d) pay stub showing the applicant's name and full SSN;  
(e) ineligibility letter from the Social Security Administration; or  
(f) other documents approved by DHS or the division director or designee.

R708-41-7 Acceptable Forms of Individual Tax Identification Number (ITIN) Evidence.  
Acceptable forms of ITIN evidence include the following:  
(1) an ITIN card issued by the Internal Revenue Service; or  
(2) a document or letter from the Internal Revenue Service verifying the ITIN.
Acceptable Forms of Utah Residence Address Evidence.

(1) Acceptable forms of Utah residence address include the following:
   (a) bank statement;
   (b) court documents;
   (c) current mortgage or rental contract;
   (d) major credit card bill;
   (e) property tax notice statement or receipt;
   (f) school transcript;
   (g) utility bill;
   (h) vehicle title; or
   (i) other documents acceptable to the division upon review.

(2) Residency evidence dated over 90 days may be reviewed by the division prior to acceptance.

(3) An individual using a letter of verification of homelessness verified by the Department of Workforce Services may be eligible for a waiver of the fee for an identification card. The verification letter shall also be acceptable evidence for Utah residency.

(4) Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business, the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division shall recognize the sponsoring agency's address as the Utah residence address of the applicant.

Acceptable Forms to Obtain Veteran Indicator.

(1) Acceptable proof of an honorable discharge or general discharge under honorable conditions from the United States military include the following:
   (a) DD214, certificate of release or discharge of duty;
   (b) DD256, honorable discharge certificate;
   (c) DD257, general discharge certificate;
   (d) NGB22, report of separation and record of service; or
   (e) other documents approved by the division director or designee.

Document Requirements.

(1) Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing or identification or safeguard the persons or in support of their official duties.

(2) Documents shall display the applicant's full legal name.

(3) Any name variation from the original or certified documents must be accompanied by legal authorizing documentation, except the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division.

(4) Upon application for any license certificate or identification card, a change of the applicant's full legal name must be accompanied by an acceptable document that authorizes the name change.

(5) A copy of an original document must be certified by the issuing agency.

Exceptions.

This rule does not apply when issuing driver license certificates or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

Document Storage.

Documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful presence, proof of SSN, or inability to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a United States birth certificate may be written on the license or identification card application rather than scanning the document.

Key: acceptable documents, identification cards, license certificates, limited-term license certificates

Date of Last Change: 2021[November 8, 2016]
Notice of Continuation: March 3, 2020

Authorizing, and Implemented or Interpreted Law: 53-3-104; 53-3-205; 53-3-214; 53-3-410; 53-3-804

NOTICE OF PROPOSED RULE

Type of Rule: Amendment

Ref (R no.): R708-46

Filing ID 54052

Agency Information

1. Department: Public Safety

Agency: Driver License

Street address: 4501 S 2700 W

City, state and zip: Salt Lake City, UT 84129

Mailing address: PO Box 144501

City, state and zip: Salt Lake City, UT 84114-4501

Contact person(s):

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kim Gibb</td>
<td>801-556-8198</td>
<td><a href="mailto:kgibb@utah.gov">kgibb@utah.gov</a></td>
</tr>
<tr>
<td>Tara Zamora</td>
<td>801-964-4483</td>
<td><a href="mailto:tarazamora@utah.gov">tarazamora@utah.gov</a></td>
</tr>
<tr>
<td>Britani Flores</td>
<td>801-884-8313</td>
<td><a href="mailto:bflores@utah.gov">bflores@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:

R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this rule is to implement legislative changes for H.B. 189 passed in the 2018 General Session, as well as removing procedural information not integral to the intent of 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 filing clarifies that a pending asylee may qualify to take the written knowledge test in their native language. This rule adds information clarifying the requirements individuals must meet in order to take the written knowledge test in their native language for the first time and upon renewal. This rule clarifies at what point individuals must take the written knowledge test in English.

Fiscal Information

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

A) State budget:

The rule change is not expected to have any fiscal impact on state government revenues or expenditures because this rule only allows the option for taking the written knowledge test in a person's native language upon the initial or first renewal of a limited-term license.

B) Local governments:

The rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because this rule only allows the option for taking the written knowledge test in a person's native language upon the initial or first renewal of a limited-term license.

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

This rule change could have an indirect fiscal benefit for five small businesses. The number of customers who choose to utilize a translation service to assist in the first renewal could increase the amount of fees collected. The indirect fiscal benefit to small businesses is inestimable. There is no way to determine how many more customers would choose to utilize their translation services to take a second written test in their native language for a first renewal of a limited-term license.

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

This rule change could have an indirect fiscal benefit for one non-small business. The number of customers who choose to utilize a translation service to assist in the first renewal could increase the amount of fees collected. The indirect fiscal benefit to non-small businesses is inestimable. There is no way to determine how many more customers would choose to utilize their translation services to take a second written test in their native language for a first renewal of a limited-term license.

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 could have a direct fiscal cost to private citizens. The number of citizens affected, and the direct fiscal cost is inestimable. There is no way to determine how many citizens would choose to utilize a translator's services. This rule change could also have a direct non-fiscal benefit to private citizens. The changes to this rule may allow an individual more time to acclimate and become more familiar with driving practices prior to being required to take a written knowledge test in English.

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 this rule because this rule only allows the option for taking the written knowledge test in a person's native language upon the initial or first renewal of a limited-term license.

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 proposed rule change could potentially have a positive impact on businesses that provide translation services for the purpose of a refugee or asylee taking a written test in connection with an application for a driver license. It is difficult to estimate the potential impact due to the fact that there is no way to determine how many more customers would choose to utilize translation services to take a second written test in their native language for a first renewal of a limited-term license. Jess L. Anderson, Commissioner

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

<table>
<thead>
<tr>
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</table>
R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language.

R708-46-1. Purpose.

[Effective July 1, 2011. ] The [Utah ]Driver License Division shall allow an applicant who is a refugee, pending asylee, or approved asylee, applying for a limited-term driver license to take the knowledge test on [the state of Utah ]traffic laws in the person's native language, the first time the person applies for a limited-term license certificate.


This rule is authorized by Section 53-3-206.


(1) "Refugee" means a person who has entered into the United States in refugee status.

(2) "Approved Asylee" means a person who has an approved application for asylum in the United States[ or who has a pending application for asylum in the United States].

(3) "Pending Asylee" means a person's status is an authorized stay, or permission to stay and work in the United States.

(4) "Limited-Term License Certificate" means the evidence of the privilege granted and issued under Title 53, Chapter [53-3], Uniform Driver License Act, to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).


(1) The first time an applicant with a refugee, approved asylee, or pending asylee status applies for a limited-term certificate, they shall be given the opportunity to take the knowledge test in their native language.

(2) [The Division of Workforce Services will maintain a list of qualified interpreters on the web. ] The first time an applicant with a refugee, approved asylee, or pending asylee status applies for a renewal of a limited-term certificate, they shall be given the opportunity to take the knowledge test in their native language.

(3) If the applicant had previously taken the knowledge test in their native language, the second limited-term renewal for a refugee, approved asylee, or pending asylee will require the applicant to pass a knowledge test of traffic laws in English.

(4) The Division of Workforce Services shall maintain a list of qualified interpreters that can be found on the Driver License Division's website.


(1) [The applicant must schedule an appointment to apply for an original limited-term license or first renewal of a limited-term license using the on-line scheduler. ]
(2) The applicant must arrange for an interpreter approved by the Division of Workforce Services to accompany them for the test.

(a) The examiner will print a test from the testing kiosk server.

(b) The examiner will observe the interpreter read the test questions and answers to the applicant in their native language.

(c) Upon completion of the test, the examiner will:

   (1) Grade the test

   (2) Inform the applicant of the test score.

   (3) Enter the results of the test on the applicant’s driver license record.

KEY: limited-term driver license; knowledge test; refugee; approved asylee

Date of Last Change: 2021 [July 12, 2011]

Notice of Continuation: May 10, 2021

Authorizing, and Implemented or Interpreted Law: 53-3-206

The purpose of this rule is to clarify the requirements needed for a commercial driver training school to teach an Instructor Preparation Course.

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 outlining and clarifying the requirements needed for a commercial driver training school to be able to obtain a certification to offer a driver education instructor preparation course. The information in this rule filing was removed from an existing rule and expanded on for a better understanding of the requirements needed to certify.

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 this rule filing is to create a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because this rule filing is to create a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

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

This rule change is not expected to have any fiscal impact on small businesses because this rule filing is to create a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

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 this rule filing is to create a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

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

This rule change is not expected to have any fiscal impact on non-small businesses because this rule filing is to create a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

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 this rule. The filing creates a new rule from information that was contained in an existing rule to make the information more readily available and easier to understand. The requirements contained within this rule have not changed.

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

This rule filing will not have an impact on businesses because it is being filed to consolidate into a separate rule the requirements for a commercial driver training school to offer a driver education instructor preparation course, to make the information more readily available and easier to understand. The rule does not change requirements currently in effect. Jess L. Anderson, Commissioner

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

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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 53-3-505

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: Christopher Caras, Division Director

Date: 10/20/2021

R708. Public Safety, Driver License Division.
R708-53. Driver Education Instructor Preparation Course Requirements.
R708-53-1. Purpose.

The purpose of this rule is to establish criteria for certification of a commercial driver training school to teach an instructor preparation course.


This rule is authorized by Section 53-3-505.

   (1) Terms used in this rule are defined in Section 53-3-502.
   (2) In addition:
      (a) "act of moral turpitude" means conduct that:
          (i) is done knowingly contrary to justice, honesty or good morals;
          (ii) has an element of falsification or fraud; or
          (iii) contains an element of harm or injury directed to another person or another property;
      (b) "course" means a driver education instructor preparation course;
      (c) "DEMS" means Driver Education Management System, the division's official record keeping program;
      (d) "division" means the Driver License Division;
      (e) "driver education instructor" means a driver education instructor licensed in accordance with Rule R708-2;
      (f) "driver education student" means a student participating in a driver education course;
      (g) "school" means a commercial driver training school licensed in accordance with Rule R708-2; and
      (e) "student instructor" means a student enrolled in a driver education instructor preparation course.

R708-53-4. Driver Education Instructor Preparation Course Certification and Record Requirements.

   (1) To become certified to provide a course, a school shall enter into a contract with the division to provide a course.
   (2) To qualify for certification to provide a course, a school shall:
      (a) be licensed and operational in accordance with Rule R708-2 for at least two years;
      (b) be violation free in accordance with Rule R708-2 for at least two years;
      (c) employ to instruct the course, a certified driver education instructor that:
          (i) has at least two years of experience instructing driver education; and
          (ii) is violation free in accordance with Rule R708-2 for at least two years.
   (3) A school certified to provide a course shall maintain a student instructor record for a period of four years for each student instructor enrolled in the course that includes:
      (a) the student instructor's name;
      (b) the date of enrollment;
      (c) the date of completion;
      (d) a record of each time the student instructor received training; and
      (e) a record of any training the student instructor provided to driver education students in connection with the course.


   (1) The course shall include the methodology for creating lesson plans for:
      (a) 18 one hour or nine two hour classroom sessions regarding a theoretical approach to driving; and
      (b) six one hour or three two hour behind-the-wheel sessions regarding a practical approach to driving.
   (2) The course manual shall include the following:
      (a) syllabus;
      (b) introduction;
      (c) table of contents;
      (d) appendix;
      (e) bibliography;
      (f) lesson plans;
      (g) assignments with answer sheets; and
      (h) quizzes and tests with answer sheets.
   (3) The curriculum shall cover, at a minimum, the subject areas listed in this rule.
   (4) There shall be a test associated with each unit of study.
   (5) A copy of the curriculum with textbooks and any videos shall be submitted to the division for approval.

R708-53-6. Required Classroom Hours.

   (1) The course shall include 50 hours of classroom instruction divided as follows:
      (a) 30 hours of classroom instruction;
      (b) 16 hours watching a certified instructor teaching driver education students; and
      (c) four hours teaching student instructors while being monitored by a certified instructor.
   (2) The student instructor may complete 18 hours of classroom training given to driver education students and apply those training hours towards the amount of classroom hours required in Subsection R708-53-6(1).
   (3) The course shall include 30 hours of out of class homework assignments.


   The course shall include 50 hours of teaching behind-the-wheel training and observing a certified instructor teaching behind-the-wheel training divided as follows:
      (1) 30 hours of behind-the-wheel training on the following:
          (a) introduction to behind-the-wheel training;
          (b) proper instruction of driving maneuvers;
          (c) creating an adequate and approved training route;
          (d) driving in urban, rural, and suburban areas; and
          (e) elements of instructor demonstration, and observation;
      (2) 14 hours watching a certified instructor teaching behind-the-wheel training; and
      (3) six hours teaching student instructors behind-the-wheel training while being monitored by a certified instructor.


   The course shall include 12 hours training on policy, forms, and administrative rule and shall include:
   (1) instructions on entering training and completion dates in DEMS;
   (2) forms including:
      (a) student records;
      (b) contracts;
      (c) the appropriate methods to maintain records;
      (d) procedures for obtaining completion certificates and learner permits; and
      (e) a discussion of similarities and differences of each type of permit;
   (3) a review of Rule R708-2, and Sections 53-3-501 through 53-3-509;
   (4) current Utah Driver License handbook curriculum must be updated annually to include new laws and information contained in the handbook;
   (5) insurance requirements for commercial school vehicles;

(1) The division may refuse to certify or may suspend a course offered by a school for any of the following reasons:
   (a) failure to comply with Title 53, Chapter 3, Part 5, Commercial Driver Training Schools Act;
   (b) failure to comply with this rule and Rule R708-2;
   (c) providing false information in an application or form required by the division;
   (d) failure to permit the division or its representatives to inspect any school classroom, record, or vehicle used for instruction;
   (e) conviction of a felony, or reasonable grounds to believe an owner or operator has committed an act of moral turpitude; or
   (f) failure to permit or enroll an individual interested in taking the course unless there is evidence the individual will not meet licensing requirements outlined in Rule R708-2.

(2) A proceeding to suspend a course offered by a commercial driver training school is designated as an informal proceeding under Section 63G-4-202.

(3) Upon receipt of a notice of agency action, a school shall not:
   (a) allow a student to enroll in a course or accept payment from a student; or
   (b) transfer contracts, records, properties, training activities, obligations, or licenses to another party.

(4) A school who has had a certification suspended shall not be eligible to reapply for a license until six months have elapsed since the date of the suspension.

(5) The applicant shall submit an application and required documentation for a course.

(6) Upon receipt of a completed application for a course, in addition to required documentation, the division shall conduct a review process as established by the division director to determine eligibility for reinstatement or re-certification.

(7) Notice of the division's final decision shall be provided in writing to the applicant within 20 days of receipt of the completed application, required documentation, and fees.

(8) When a request for reinstatement or re-certification is denied, the applicant shall have an opportunity to request a hearing in writing within 20 days of receipt of the division's final decision.


(1) The following procedures will govern informal adjudicative proceedings:
   (a) the division shall commence an action to suspend, place on probation, or refuse to certify a course offered by a commercial driver training school by the issuance of notice of agency action;
   (i) the notice of agency action shall comply with Section 63G-4-201; and
   (ii) the notice of agency action shall not require a response from the recipient;
   (b) an opportunity for a hearing shall be granted on a suspension, probation or refusal to certify a course when the division receives in writing a proper request for a hearing;
   (c) the division shall send written notice of a hearing to the licensee or applicant at least 14 days prior to the date of the hearing;
   (d) no discovery, either compulsory or voluntary, shall be permitted prior to the hearing except that each party shall have access to information in the division's files, and to investigator information and materials not restricted by law;
   (e) the division shall designate an individual or panel to conduct the hearing;
   (f) within 20 days after the date of the close of the hearing, or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision that shall constitute final agency action; and
   (g) the written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right of judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(2) If a course offered by a school is suspended, placed on probation or refused certification:
   (a) contracts, records, properties, training activities, obligations, or licenses shall not be transferred to another party; and
   (b) existing classroom and training hours shall not be transferred to another school for completion.

(3) If a course offered by a school is suspended or refused certification under Section 63G-4-502, the school shall not be authorized to offer the course unless otherwise determined at a hearing.

(4) If a course offered by a school is suspended or refused certification under Section 63G-4-502, and the school license is valid, the school may continue operation other than offering the course provided that an instructor employed by the school with a valid instructor license ensures operation does not compromise public safety.

(5) A course offered by a school may be placed on probation upon approval of the division director or designee.

KEY: driver education, schools, rules and procedures
Date of Last Change: 2021
Authorizing and Implemented or Interpreted Law: 53-3-505 through 53-3-509

NOTICE OF PROPOSED RULE

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Agency Information

1. Department: Public Safety

Agency: Fire Marshal

Street address: 410 W 9800 S, Suite 372
City, state and zip: Sandy, UT 84070

Contact person(s):

<table>
<thead>
<tr>
<th>Name:</th>
<th>Phone:</th>
<th>Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kim Gibb</td>
<td>801-556-8198</td>
<td><a href="mailto:kgibb@utah.gov">kgibb@utah.gov</a></td>
</tr>
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</table>

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22 145
This rule only impacts full time, part time, and volunteer firefighters working for the or a subdivision of the state. There is no impact to small businesses.

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

This rule only impacts full time, part time, and volunteer firefighters working for the or a subdivision of the state. There is no impact to non-small businesses.

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

This rule only impacts full time, part time, and volunteer firefighters working for the or a subdivision of the state. Firefighter certification in Utah is voluntary. There is no cost for certification. The costs relevant to training, testing, and recertification is not addressed in this rule.

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

Firefighter certification in Utah is voluntary. There is no cost for certification. The costs relevant to training, testing, and recertification is not addressed in 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):

It is not anticipated that this rule filing will have an impact on businesses. The rule only impacts full time, part time, and volunteer firefighters, and there is not a cost for certification. Fees associated with training and testing of fire fighters are not addressed in this rule. Jess L. Anderson, Commissioner

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<th>Regulatory Impact Table</th>
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<td>Non-Small Businesses</td>
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<td>Other Persons</td>
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NOTICES OF PROPOSED RULES

Citation Information

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

Section 53-7-204

Incorporations by Reference Information

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

<table>
<thead>
<tr>
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<tr>
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H) This rule adds, updates, or removes the following title of materials incorporated by references:

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Rope Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Confined Space Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Trench Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Structural Collapse Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Vehicle Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Machinery Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Surface Water Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Swiftwater Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |

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

| Official Title of Materials Incorporated (from title page) | Technical Rescue - Ice Level I, II |
| Publisher | National Fire Protection Association |
| Issue, or version | NFPA 1006, 2013 Edition |
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<td>National Fire Protection Association</td>
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<td><strong>Issue, or version</strong></td>
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V) This rule adds, updates, or removes the following title of materials incorporated by references:

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<tr>
<td>National Fire Protection Association</td>
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<td><strong>Issue, or version</strong></td>
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<td>NFPA 1051, 2020 Edition</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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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>Coy Porter, State Fire Marshal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>10/27/2021</td>
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R710. Public Safety, Fire Marshal.


R710-16-1. Purpose.

The purpose of this rule is to establish criteria for the certification of firefighters, pump operators, instructors, fire officers, fire investigators, and rescue personnel. This rule establishes the Fire Service Certification Council as a subset of the Utah Fire Prevention Board and establishes standards for those agencies conducting non-affiliated academy fire service training.

R710-16-2. Authority.

This rule is authorized by Section 53-7-204.

R710-16-3. Definitions.

(1) "Academy" means the Utah Fire and Rescue Academy of the Utah Valley University.
(2) "Academy Director" means the director of the Utah Fire and Rescue Academy.
(3) "Board" means Utah Fire Prevention Board.
(4) "Certification Council" means the Fire Service Certification Council.
(5) "Certification System" means the Utah Fire Service Certification System.
(6) "EMT" means emergency medical technician.
(7) "Non-Affiliated" means an individual who is not a member of an organized fire department.
(8) "RCA" means Recruit Candidate Academy.
(9) "SFM" means State Fire Marshal or authorized deputy.

(1) The criteria for the certification of firefighters, pump operators, instructors, fire officers, fire investigators, and rescue personnel shall be the criteria established by the following standards published by the National Fire Protection Association which can be found online at the National Fire Protection Association website:
(d) Firefighter I, II, NFPA 1001, 2019 Edition;
(f) Airport Firefighter Professional Qualifications, NFPA 1003, 2019 Edition;
(g) Technical Rescue - Chapter 5, NFPA 1006, 2013 Edition;
(q) Fire Officer I, II, III, IV, NFPA 1021, 2020 Edition;
(s) Fire Investigator, NFPA 1033, 2014 Edition;
(u) Fire Instructor I, II, NFPA 1041, 2019 Edition;
(2) The approval of the criteria for certification of firefighters, pump operators, instructors, fire officers, fire investigators, and rescue personnel shall be made by the Utah Fire Service Certification Council and the Utah Fire Prevention Board.
(3) The available certifications shall be identified on the Utah Fire Service Certification Levels form, and be approved by the Utah Fire Service Certification Council.

R710-16-5. Utah Fire Service Certification Council.
(1) There is created by the board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification within the state, and the accreditation and reaccreditation of non-affiliated fire service training organizations.
(2) The Certification Council shall be comprised of:
(a) 12 members that shall each serve a three-year term who are:
(i) appointed by the academy director;
(ii) approved by the board;
(iii) users of the certification system;
(iv) from various geographical locations within the state; and
(v) experienced in firefighting and emergency operations; and
(b) the SFM or designee.
(3) The Certification Council shall be made up of users of the certification system, and be comprised of both paid and volunteer fire personnel, and members from various geographical locations in the state.
(4) The purpose of the Certification Council is to provide direction on each aspect of certification, and to report the activities of the Certification Council to the board.
(5) Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity shall be conducted as specified in the Utah Fire Service Voluntary Certification Program Policy and Procedures Manual.
(6) A copy of the Utah Fire Service Voluntary Certification Program Policy and Procedures Manual shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

(1) Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive accreditation in writing from the Certification Council and the academy director.
(2) Before accreditation is granted, the training organization requesting approval shall demonstrate the following:
(a) complete a written application requesting approval to conduct the training course;
(b) designate an approved course coordinator to oversee the course delivery and ensure the course meets each of the applicable objectives;
(c) ensure that qualified instructors are used to teach each subject;
(d) ensure sufficient student to instructor ratios for each subject or skill to be taught to include those designated high hazard;
(e) demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught;
(f) maintain course documentation as required through the Certification System to ensure that each element of the necessary training is completed; and
(g) follow the accepted requirements of the Certification System for requesting testing and certification.
(3) The designated course coordinator shall meet the following requirements:
(a) be currently certified at the certification level as established by the Standards Council;
(b) ensure that the course syllabus and practical skills guide meet the requirements of the Certification System; and
(c) ensure that the requirements of the applicable referenced standard are met.
(4) The qualified instructors shall meet the following requirements:
   (a) must be currently certified at the certification level as established by the Standards Council; and
   (b) if the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.
(5) An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA. The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the academy sufficient competency or prior experience in the fire service to make the class unwarranted.
(6) Non-affiliated training providers shall follow the curriculum outline that is taught at the academy in the RCA program to award students an RCA Certificate of Completion. Any changes to the curriculum of the RCA program at the academy shall be provided by the academy to the non-affiliated training providers to maintain consistency in the RCA program.
(7) An RCA Certificate of Completion may be issued to the non-affiliated student by the academy upon successful completion of the following:
   (a) introduction to Emergency Services class or accepted waiver;
   (b) EMT Basic Course; and
   (c) completion of an accredited RCA.
(8) Non-affiliated training providers that have received accreditation shall be reaccredited every five years from the date of initial accreditation.

R710-16-7. Repeal of Conflicting Board Actions.
Each former board action, or part thereof, conflicting or inconsistent with this board action or with the codes adopted, is repealed.

The Utah Fire Prevention Board declares that should any section, paragraph, sentence, or word of this board action, or of the codes adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

(1) Adjudicative proceedings performed by the agency shall proceed informally as set forth in R710-16-9, and as authorized by Sections 63G-4-202 and 63G-4-203.
(2) A person may request a hearing on a decision made by the Certification Council by filing an appeal to the SFM, to be heard by the board, within 20 days after receiving final decision.
(3) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to each party involved.
(4) The board shall direct the SFM to issue a signed order to each party involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.
(5) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.
(6) Judicial review of each final board action resulting from an informal adjudicative proceeding is available pursuant to Section 63G-4-402.

KEY: fire training
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 53-7-204

NOTICE OF PROPOSED RULE

<table>
<thead>
<tr>
<th>Type of Rule: Amendment</th>
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<tr>
<td>Utah Admin. Code: R714-510</td>
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</table>

Agency Information

1. Department: Public Safety
2. Agency: Highway Patrol
3. Building: Calvin Rampton Complex
4. Street address: 4501 S 2700 W
5. City, state and zip: Salt Lake City, UT 84119-5994
6. Mailing address: PO Box 141100
7. City, state and zip: Salt Lake City, UT 84114-1100
8. Contact person(s):
   Name: Kim Gibb
   Phone: 801-556-8198
   Email: kgibb@utah.gov

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

General Information

2. Rule or section catchline:
R714-510. 24-7 Sobriety Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule filing is being submitted as a result of the passage of H.B. 26 during the 2021 General Session. Changes are being made to this rule to accommodate the expansion of the 24-7 sobriety pilot program to a statewide 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):
This rule filing removes language that previously required an individual to complete a risk assessment and be determined a low risk offender, and to qualify for a
hardship, to participate in the 24-7 sobriety program through the use of transdermal monitoring.

In addition, changes are being made to some of the participant testing fees and the distribution of fees between the Department of Public Safety and the law enforcement agency choosing to participate in the program to cover the costs incurred by the agency to participate in the program.

Language has been added to specify that for each portable breath test conducted by a law enforcement agency, the agency will retain $1. Due to the range of fees associated with various urine and oral fluid testing supplies, the $6 fee for drug testing has been removed, and the participating law enforcement agency will now be authorized to charge a fee to cover the costs associated with these types of testing methodologies. The transdermal alcohol monitoring fee has been changed from $7.55 per day to $10 per day, which is in line with the costs identified in the contract between the state and the Secure Continuous Remote Alcohol Monitor (SCRAM) for providing the equipment and monitoring.

The participating law enforcement agency will retain $2 of the daily fee for each program participant using transdermal alcohol monitoring in order to cover the costs incurred by the Utah Highway Patrol (UHP). Legislative approval will be pursued to codify fees during the 2022 General Session.

**Fiscal Information**

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

A) State budget:

This rule change will result in an increase in the fee associated with daily transdermal alcohol monitoring for a participant in the 24-7 sobriety program from $7.55 per day to $10 per day. The fee will be used by the state to cover the costs associated with equipment and monitoring, in addition to administrative costs incurred for administering the 24-7 sobriety program.

The actual dollar amount that could be received by the state is difficult to estimate due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring. The state plans to obtain 25 continuous alcohol monitoring bracelets to begin with and will not be charged by the vendor until they are activated. The costs for the use of this technology will be born by the program participant.

B) Local governments:

This rule change specifies that if a 24-7 program participant is authorized to participate through the use of transdermal alcohol monitoring, the participant will be charge a fee of $10 per day. The law enforcement agency choosing to participate in the 24-7 sobriety program will be authorized to retain $2 per day to cover costs incurred by the UHP for administering the 24-7 sobriety program. The actual dollar amount that could be received by a local law enforcement agency is difficult to estimate due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring.

A local law enforcement agency that chooses to participate in a 24-7 sobriety program is authorized to retain $1 for each portable breathalyzer test administered in connection with the program. This will result in a $2 fee for each program participant per day being retained by the agency for the twice daily testing.

A first offender is required to participate in the program for a minimum of 30 days, which would cost the participant a total of $60, $30 of which would be retained by the agency. A second or subsequent offender is required to participate in the program for a minimum of one year, which would cost the participant a total of $730, $365 of which would be retained by the agency.

It is difficult to estimate how many program participants will be ordered by a judge to participate in a 24-7 sobriety program after being convicted for a DUI offense.

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

This rule change will not have an impact on small businesses. The changes being made to the transdermal alcohol monitoring fee will only impact the vendor with whom the state has a contract for providing the equipment and monitoring. The actual dollar amount that could be received by the vendor for transdermal alcohol monitoring is difficult to estimate due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring.

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

This rule change will not have an impact on non-small businesses. The changes being made to the transdermal alcohol monitoring fee will only impact the vendor with whom the state has a contract for providing the equipment and monitoring. The actual dollar amount that could be received by the vendor for transdermal alcohol monitoring is difficult to estimate due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring.

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 will result in a fee increase of $2.45 per day for persons other than small businesses, non-small businesses, state, or local government entities that are 24-7 sobriety program participants who are authorized to participate in the program through the use of transdermal alcohol monitoring.

There are not currently any program participants using transdermal alcohol monitoring in connection with the 24-7 sobriety program. It is difficult to estimate the total dollar amount that could be incurred by a person due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring, or the length of time they might be approved to use transdermal alcohol monitoring during their required timeframe in the program.

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

Affected persons that are participants in the 24-7 sobriety program and obtain authorization to participate through the use of transdermal alcohol monitoring will be required to pay a fee of $10 per day. This technology would allow an individual to participate without appearing at a testing facility and could result in a benefit under circumstances where the individual is not able to appear twice daily for breath testing due to extenuating circumstances in connection with employment or vacation for example.

It is difficult to estimate the total dollar amount that could be incurred by a person due to the fact that the UHP is unable to determine the number of program participants that could potentially be approved to participate through the use of transdermal alcohol monitoring, or the length of time they might be approved to use transdermal alcohol monitoring during their required timeframe in the program.

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

This rule change will not result in a fiscal impact to businesses, with the exception of the vendor with whom the state has a contract to provide transdermal alcohol monitoring. This rule change will result in an increase of $2.45 per day for transdermal alcohol monitoring in connection with participation in the 24-7 sobriety program. This fee will only apply to those who obtain authorization to participate using this testing methodology. To date, there have not been any program participants authorized to use transdermal alcohol monitoring in connection with the program. Jess L. Anderson, Commissioner

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

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<td>Net Fiscal Benefits</td>
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B) Department head approval of regulatory impact analysis:
The Commissioner of the Utah Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

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

Section 41-6a-515.5

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: 12/15/2021
R714-510. 24-7 Sobriety Program.

R714-510-1. Authority.

This rule is authorized by Subsection 41-6a-515.5(7).


The purpose of this rule is to establish criteria and procedures for a law enforcement agency to participate in a 24-7 sobriety program.


(1) Definitions used in the rule are found in Sections 41-6a-102[,] and 41-6a-515.5.

(2) In addition,

(1) [“24-7 Sobriety Program Committee” or “committee” means a committee comprised of members from the Department of Public Safety, the Department of Technology Services, the Administrative Office of the Courts, and the participating law enforcement agency [for the purpose of] establishing criteria and procedures for a 24-7 sobriety program.


(1) An individual participating in a 24-7 program for in person alcohol testing shall:

(a) appear at the designated law enforcement agency or testing site twice a day, both between the hours of 6-8 am and 6-8 pm;

(b) submit to a portable breath test[,] and

(c) if the portable breath test result indicates alcohol consumption, submit to an Intoxilyzer test for a confirmation result; and

(2) An individual participating in a 24-7 program for drug testing shall:

(a) appear at the designated law enforcement agency or testing site on a random basis as requested;

(b) submit to required drug testing; and

(c) pay the required testing fee for each test administered.

R714-510-5. Apparatus to be Used for Testing.

The following apparatus are acceptable for use in a 24-7 sobriety program;

[**Portable breath test;**
[Intoxilyzer test;
[urine test;
[oral fluid test; and
[blood test.


(1) A law enforcement agency that participates in a 24-7 sobriety program may require payment of a testing fee by a person participating in the program as follows:

- $30[,] for enrollment in the 24-7 sobriety program;

- $2[,] for each portable breath test or Intoxilyzer test administered, $1 of which will remain with testing program site;

- $6[,] a fee as determined by the law enforcement agency to cover the cost for each urine or oral fluid drug test administered, which will remain with the testing program site; and

- $7.55[,] per day for the use of transdermal alcohol monitoring[,] $2 of which will remain with testing program site.


(1) A law enforcement agency that participates in a 24-7 sobriety program must use a data management technology plan approved by the department to manage the following:

- testing;

- data access;

- fees;

- fee payments; and

- any required reports.


(1) A person who tests positive for alcohol or drugs under a 24-7 sobriety program may be subject to the following:

(a) jail commitment of 8 hours for the first occurrence;

(b) jail commitment of 16 hours for the second occurrence;

(c) jail commitment of 24 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.

(2) A person who fails to appear for a required test may be subject to the following:

(a) jail commitment of 12 hours for the first occurrence;

(b) jail commitment of 24 hours for the second occurrence;

(c) jail commitment of 48 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.


(1) The 24-7 Sobriety Program Committee may evaluate and pilot alternate components of the 24-7 sobriety program.

(2) Upon evaluation and determination of the committee that an alternate component of the 24-7 Sobriety Program is deemed effective, the committee may incorporate the alternate component into the 24-7 Sobriety Program.

KEY: 24-7 Sobriety Program, sobriety testing

Date of Last Change: 2021[December 28, 2017]

Authorizing, and Implemented or Interpreted Law: 41-6a-515.5

10. This rule change MAY become effective on: 12/22/2021

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.
NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R728-507 Filing ID 54043

Agency Information

1. Department: Public Safety
Agency: Peace Officer Standards and Training
Street address: 410 W 9800 S
City, state and zip: Sandy, UT 84070
Mailing address: 410 W 9800 S
City, state and zip: Sandy, UT 84070
Contact person(s):
Name: Scott Stephenson Phone: 801-256-2322 Email: sstephen@utah.gov
Name: Kim Gibb Phone: 801-556-8198 Email: kgibb@utah.gov

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

General Information

2. Rule or section catchline:
R728-507. Minimum Standards for Use of Force Policies to be Adopted by Public Safety Agencies That Employ Peace Officers

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being proposed as a result of the passage of S.B. 106 in 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 rule establishes minimum standards for use of force policies to assist each agency that employs peace officers in developing their own agency use of force policy. The rule addresses use of force policy, standards for use of deadly force policy, less-lethal force policy, defensive tactics, canine deployment as use of force, duty to intervene and report, medical assistance, and reporting use of force.

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 impact on state government revenues or expenditures because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

B) Local governments:
This rule change is not expected to have any impact on local governments’ revenues or expenditures because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

C) Small businesses (“small business” means a business employing 1-49 persons):
This rule change is not expected to have any impact on small businesses’ revenues or expenditures because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

D) Non-small businesses (“non-small business” means a business employing 50 or more persons):
This rule change is not expected to have any impact on non-small businesses’ revenues or expenditures because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

E) Persons other than small businesses, non-small businesses, state, or local government entities (“person” means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have any impact on revenues or expenditures for persons other than small businesses, non-small businesses, state or local government entities because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
This rule change will not result in any compliance costs for affected persons because it only establishes minimum standards for use of force policies to be adopted by public safety agencies that employ peace officers.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
This rule will not have any fiscal impact on businesses because the rule only establishes minimum standards for use of force policies for peace officers employed by public safety agencies. Jess L. Anderson, Commissioner
6. A) Regulatory Impact Summary Table

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

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B) Department head approval of regulatory impact analysis:
The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

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

Section 53-6-109, Section 53-13-114, Section 76-2-404, Section 76-1-601, Section 77-7-7

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: | Scott Stephenson, Director | Date: 10/18/2021 |

R728. Public Safety, Peace Officers Standards and Training.

R728-507-1. Authority.
(1) This rule establishes minimum standards for use of force policies to be adopted by law enforcement agencies authorized to employ peace officers.
(2) This rule is authorized by Sections 53-6-105, and 53-6-109.

This policy does not apply to the use of firearms in situations not intended to cause death or serious bodily injury, including putting down wildlife, use of breaching shotguns, or use of firearms in training or practice. Due to the unique legal considerations concerning use of force on prisoners and detainees at correctional facilities, this policy is intended to govern law enforcement officers' actions and not correctional or detention facility officers' actions within correctional facilities.

(1) Terms in this rule are defined in Sections 53-13-116, 76-1-601, and 76-2-404.
(2) In addition:
(a) "defensive tactics" means actions taken when a subject is either assaulting the officer or another or is displaying a willingness and intent to do so;
(b) "feasible" means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person;
(c) "force" means the application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows themself to be searched, escorted, handcuffed, or restrained;
(d) "imminent" means ready to take place; impending. Imminent does not mean immediate or instantaneous; and
(e) "totality of the circumstances" means facts and circumstances known or reasonably perceived by the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.
R728-507-4. Purpose.

(1)(a) The purpose of this rule is to provide the minimum standards for an individualized law enforcement agency use of force policy.

(b) It is not the intent nor legal purpose of these minimum standards to be exhaustive or inclusive on this subject.

(2) As law enforcement officers balance factors justifying use of force, these minimum standards assist in training as well as providing a threshold for the law enforcement officer while analyzing the use of force in actual field situations.

(3)(a) The department establishes these minimum standards to assist each agency in developing its own agency use of force policy.

(b) While implementing and revising an agency use of force policy, each agency shall use these minimum standards as a starting point and then individualize its agency use of force policy as needed.

R728-507-5. Use of Force Policy.

(1) Officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.

(2) Officers shall respect the sanctity of human life, must act reasonably to preserve human life, do what is reasonably possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

(3) No policy may realistically predict every possible situation an officer might encounter in the field. It is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to sustain or risk physical injury before applying reasonable force.

(4) Officers may only use force as provided in Sections 76-2-401 through 76-2-404 and 77-7-7.

(5) In determining whether to apply any level of force, various factors that should be considered include:

(a) the conduct of the individual being confronted as reasonably perceived by the officer at the time;

(b) comparative age, size, relative strength, skill level, injury, and exhaustion, of officers and subjects;

(c) the number of officers vs. subjects;

(d) impairment of the subject;

(e) the proximity of weapons;

(f) the degree to which the subject has been effectively restrained and the subject’s ability to resist despite being restrained;

(g) time and circumstances permitting, the availability of other resources or tactics;

(h) the seriousness of the suspected offense and reason for contact with the subject;

(i) the training, skill and experience of the officer;

(j) the potential for injury to citizens, officers, and suspects;

(k) the risk of escape of the suspect;

(l) whether time, proximity and opportunity permit the use of de-escalation efforts;

(m) the public safety risk of an immediate apprehension weighed against a delayed apprehension, including, whether the subject’s identity is known, level of encounter, and level of resistance; and

(n) other exigent circumstances or any other relevant factors.

(6) Officers are expected to use only that degree of force that is reasonable based on the totality of the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

(7) Circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons, or methods provided by the agency. Officers may find it more effective or practical to improvise a response to rapidly unfolding conditions confronting the officer. In such circumstances, the use of any improvised device or method of force must, nonetheless, be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.


(1) Any use of deadly force by an officer shall comply with Section 76-2-404.

(2) Intentional discharge of a firearm in a use of force situation is considered deadly force. However, the act of establishing a grip, drawing a weapon or pointing a weapon does not constitute the use of deadly force.

(3) Other force may also be considered deadly force if the officer reasonably believes and intends that the force applied will create a substantial likelihood of causing death or serious bodily injury.

(4) If reasonable and feasible, an officer shall make efforts to identify their position as a peace officer prior to the use of deadly force.

(5) If reasonable and feasible, an officer shall give a verbal warning to submit to the authority of the officer prior to the use of force if doing so would not increase the danger to the officer or others.

(6) Use of deadly force by discharge of a firearm against the operator of a moving vehicle, vessel, or aircraft may create additional harm to officers or others. The hazard of an uncontrolled conveyance must be taken into consideration prior to the use of deadly force. Consequently, deadly force should not be used against an operator of a moving vehicle merely fleeing from officers unless the vehicle or the escape of the subject poses an imminent threat of serious physical injury or death to the officer or to another person.

(7) Officers should move out of the path of an approaching vehicle, if feasible, instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.


(1) Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or serious injury is considered as less-lethal force. Less-lethal force options may include, handcuffs and leg restraint devices, control devices and techniques, conducted energy weapons, impact weapons, pain compliance techniques, defensive tactics, and canine deployment.

(2) Agencies should provide officers with equipment, training, and defensive tactics skills to assist in the apprehension and control of suspects as well as the protection of officers and the public.
(3) Officers should only apply those pain compliance techniques for which the officer has received agency-approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose.

(a) Chokeholds, respiratory, or carotid restraints shall not be used as a pain compliance or arrest control technique. Chokeholds, respiratory, or carotid restraints may be used only if deadly force is reasonable and necessary to prevent serious bodily injury or death to the officer or other person.

(b) Such restraints include kneeling on, applying chokeholds, or applying direct and constant force to the mouth, neck, spine, or throat.

(c) Officers shall not attempt to render an individual unconscious through the use of respiratory or vascular neck restraints unless the use of deadly force is reasonable and necessary.

(4) Officers utilizing any pain compliance technique should consider the totality of the circumstance, including:

(a) the potential for injury to the officer or others if the technique is not used;

(b) the potential risk of serious injury to the individual being controlled;

(c) the degree to which the pain compliance technique may be controlled in the application according to the level of resistance;

(d) the level of resistance of the individual involved;

(e) the need for prompt resolution of the situation; and

(f) whether time or circumstances permit use of reasonable alternatives.

(5) The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved. Officers must evaluate the subject for injuries that may have been sustained in any use of force and provide appropriate medical treatment as soon as practicable.


(1) Officers may only apply defensive tactics when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose.

(2) Officers should use only defensive tactics in which the officer has been trained and which are approved by the agency. Approved defensive tactics include:

(a) focused strikes involving the use of empty-hand techniques; or

(b) contact control measures, such as strategic positioning, escort holds, ground tactics, joint manipulation, or immobilization.


(1) This policy shall apply only to deployment of a police service canine as an intentional use of force.

(2) When deciding whether to deploy a canine, a handler should consider the totality of the circumstances, including:

(a) the nature and severity of the offense for which a suspect is sought;

(b) the potential danger posed to the public or officers by the suspect;

(c) whether the suspect is actively resisting arrest, escaping or evading capture; and

(d) whether there are any innocent persons, children, bystanders, or other officers contained within the area in which the canine will be deployed, and whether such persons are reasonably likely to hear and respond to canine deployment warnings.

(3) Canine deployment should be limited to circumstances where a suspect:

(a) is wanted for a serious felony involving violence or a threat of violence;

(b) is reasonably suspected of being armed or otherwise dangerous; or

(c) is wanted for a serious misdemeanor involving violence or a threat of violence, and refuses to comply to lawful orders, or is reasonably suspected to be armed.

(4) A canine shall not be used to apprehend a known juvenile suspect unless they pose an imminent threat of serious bodily injury or death to the officer or another person.

(5) Officers must evaluate the subject for injuries that may have been sustained in the canine deployment and provide appropriate medical treatment as soon as practicable.


(1) Any officer present and observing another law enforcement officer or employee using force that is clearly beyond that which is objectively reasonable under the circumstances shall intervene to prevent the use of unreasonable force, if feasible or reasonably possible.

(2) Any officer who observes another officer use force which is not objectively reasonable under the circumstances shall report these observations to a supervisor as soon as feasible. When observing or reporting force used by an officer, each officer must consider the totality of the circumstances and the possibility that other officers may have additional information regarding a threat posed by the subject.

(3) The agency shall investigate the incident and take appropriate action.


(1) Medical assistance shall be obtained for any person who has sustained visible injury, expressed a complaint of an injury, or continuing pain or who has been rendered unconscious.

(2) If any such individual refuses medical attention, such a refusal shall be fully documented.

(3) Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable.

R728-507-12. Reporting the Use of Force.

(1) Any pointing of a firearm at an individual, aiming of a conductive energy device at an individual that displays the electrical current, or use of physical force by an employee of the agency shall be documented promptly, completely, and accurately in an appropriate report. The reporting officer should articulate the factors perceived and why the reporting officer believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the agency may require the completion of additional report forms as specified in policy, procedure, or law.

(2) The reporting officer shall document and report the following incidents or use of force to the investigating agency:

(a) any discharge of a firearm or less-lethal weapon;

(b) any injury inflicted by a police service canine;
(c) any intentional discharge of a chemical spray;
(d) any strike or attempted strike with an impact weapon;
(e) any strike or attempted strike of any individual by an 
officer with hands or feet;
(f) any physical contact with an individual resulting in an 
injury or complaint of an injury that requires medical treatment or a 
medical release to book the individual into jail;
(g) any intentional discharge of a conducted energy 
weapon;
(h) any application of a restraint device other than 
handcuffs, shackles, or belly chains; and
(i) any circumstance in which a subject alleges any
unreasonable use of force.

(3) A supervisor must respond to a reported application of 
force resulting in visible injury, if reasonably available. When a 
supervisor is able to respond to an incident in which there has been a 
reported application of force, the supervisor shall investigate, ensure 
that medical treatment is rendered where appropriate, photograph any 
alleged injuries, identify witnesses, and where appropriate, initiate an 
administrative investigation.

KEY: use of force, firearms, canine, policy
Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 53-6-109, 
53-13-116, 76-2-404, 76-1-601, 77-7-7

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 impact on 
state government revenues or expenditures because it 
only establishes standards for training, certifying, and 
recertifying patrol and SWAT police service canine teams.

B) Local governments:
This rule change is not expected to have any impact on 
local governments’ revenues or expenditures because it 
only establishes standards for training, certifying, and 
recertifying patrol and SWAT police service canine teams.

C) Small businesses ("small business” means a 
business employing 1-49 persons):
This rule change is not expected to have any impact on 
small businesses’ revenues or expenditures because it 
only establishes standards for training, certifying, and 
recertifying patrol and SWAT police service canine teams.

D) Non-small businesses ("non-small business” means a 
business employing 50 or more persons):
This rule change is not expected to have any impact on 
non-small businesses’ revenues or expenditures because it 
only establishes standards for training, certifying, and 
recertifying patrol and SWAT police service canine teams.

E) Persons other than small businesses, non-small 
businesses, state, or local government entities 
("person” means any individual, partnership, corporation, 
association, governmental entity, or public or private 
organization of any character other than an agency):
This rule change is not expected to have any impact on 
revenues or expenditures for persons other than small 
businesses, non-small businesses, state or local 
government entities, because it only establishes standards 
for training, certifying, and recertifying patrol and SWAT 
police service canine teams.

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

This rule is being proposed as a result of the passage of 
S.B. 38 in 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 rule establishes standards for training, certifying, and 
recertifying patrol and SWAT police service canine teams.
This rule will not have any fiscal impact on businesses because the rule only establishes minimum standards for training, certifying, and recertifying patrol and SWAT police service canine teams. Jess L. Anderson, Commissioner

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

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B) Department head approval of regulatory impact analysis:
The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

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

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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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: Scott Stephenson, Director
Date: 10/21/2021

R728. Public Safety, Peace Officers Standards and Training.
R728-508. Police Service Patrol and SWAT Canine Training, Certification, and Recertification Standards.
R728-508-1. Authority.
(1) This rule establishes training, certification, and recertification standards for police service agency police service canine teams.
(2) This rule is authorized by Section 53-6-403.
(1) Terms in this rule are defined in Sections 53-6-102, 53-6-401, and 76-9-306.
(2) In addition:
(a) "police service canine team" includes the "handler" and "police service canine" as defined in Section 76-9-306; and
(b) "qualifying canine certifying entity" includes the Utah POST Police Service Dog Program, or any other canine training entity approved by the POST Council and maintained on a list by the POST Director that satisfies the standards provided in this rule.
R728-508-3. Purpose.
This rule provides minimum standards for training, certifying, and recertifying patrol and SWAT police service canine teams.
(1) Each police service canine team shall be initially certified and annually recertified by POST or a qualifying canine certifying entity.

(1) A police service canine candidate seeking to become certified shall successfully demonstrate the following behaviors during a certification test administered by POST or a qualifying canine certifying entity:

(a) yard-to-yard search for subjects, on-leash and off-leash;
(b) building search for subjects, on-leash and off-leash, to ensure barking indication at doors or inaccessible hiding spots;
(c) open area search for subjects, on-leash and off-leash;
(d) open area pursuit and capture in which a subject refuses to surrender and physically engages with the canine followed by release after receiving a verbal release command at the earliest reasonable opportunity;
(e) open area pursuit and capture of a subject who surrenders prior to physical contact by the pursuing canine by use of a verbal command, such that the surrendering subject is not injured;
(f) wind scenting or scouting, on-leash and off-leash, exhibited by a non-barking indication;
(g) release of a subject after receiving a verbal release command at the earliest reasonable opportunity during any type of physical engagement, with a maximum of three commands to obey; and
(h) gun-sure, or remaining on task during gunfire, to ensure a neutral response to handler gunfire, backup officer gunfire, or suspect gunfire.

(2) It is recommended that a police service canine candidate demonstrate the following behaviors during a certification test administered by POST or any qualifying canine certifying entity:

(a) tracking to include footstep-to-footstep, street-tracking, or trailing; and
(b) evidence search, on-leash and off-leash, to ensure non-contaminating evidence indication.

R728-508-5. Police Service Canine Handler Certification.

A police service canine handler candidate seeking to become certified shall successfully demonstrate the following behavior, skills, and knowledge during a certification test administered by POST or a qualifying canine certifying entity:

(1) knowledge of foundational state and federal statutes, constitutional law, and essential controlling judicial precedent guiding appropriate deployment of a police service canine;
(2) ability to properly document the police service canine performance behaviors to establish the canine's reliability;
(3) ability to distinguish the diverse proper functions of a police service canine as a locating tool or force option;
(4) the necessity of pre-deployment warnings;
(5) ability to recognize the circumstances in which a police service canine should be recalled or commanded to disengage from a subject;
(6) understanding of technical information that includes canine psychology, emergency canine first aid, daily care and maintenance; and
(7) understanding of patrol canine basic training that includes the ability to execute common scent work training exercises, obedience and agility training exercises, and apprehension training exercises.

NOTICE OF PROPOSED RULE

R728-508-6. Police Service Canine Team Recertification.

(1) A police service canine candidate seeking to recertify shall successfully demonstrate the behaviors and skills established in Section R728-508-4 in an annual recertification exam.

(2) A police service canine handler candidate seeking to recertify shall successfully demonstrate the behavior, knowledge, and skills established in Section R728-508-5 in an annual recertification exam.

KEY: canine, standards, training, certification

Date of Last Change: 2021
Authorizing, and Implemented or Interpreted Law: 53-6-102; 53-6-401; 53-6-402; 53-6-403; 76-9-306

NOTICE OF PROPOSED RULE

R746-8  Utah Universal Public Telecommunications Service Support Fund (UUSF)

2. Rule or section catchline:

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

Section R746-8-401 is being amended pursuant to a four-month public stakeholder process that began on 07/02/2021 when the Division of Public Utilities filed with the Public Service Commission (PSC) a request for agency action asking for the rules related to the Utah Universal Service Fund (UUSF) to be updated and modified. The request to the PSC addressed three issues: 1) codifying current operating procedures in rule, 2) establishing a standard rate for wholesale broadband only...
loops, and 3) establishing a reduced rate for broadband only service for qualifying low-income customers.

After the stakeholder process during which the PSC requested and invited comments from any interested person (and which received some attention in nationwide trade press), this rule amendment being proposed represents a consensus where all who provided comments expressed support for the changes, and where no person filed comments objecting to the rule changes being filed.

In Section R746-8-200 the changes add or amend the definitions of certain terms that are referenced in the amendments to Section R746-8-401.

In Sections R746-8-100, R746-8-301, R746-8-402, R746-8-403, R746-8-404, and R746-8-405, correction of grammatical errors and other nonsubstantive changes are being made.

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: 1) modifies definitions to be consistent with other changes; 2) establishes in rule the current operating process for annual reviews of the UUSF; 3) sets a standard rate of $25 per line (per month) that will be imputed to the rate-of-return regulated providers for wholesale “consumer broadband only loops” (which is an increase from the current weighted average rate of $8.97); and 4) establishes a broadband option of $18 per line (per month) to provide UUSF-subsidized Internet at a reduced rate for qualifying low-income customers. Absent future public comments that alter this intention, the PSC anticipates making these rule amendments effective on or about 01/01/2022.

Fiscal Information

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

A) State budget:

Under current rules (i.e., “Base Case”), rate-of-return regulated providers that qualify for Utah Universal Service Fund (UUSF) disbursements serve approximately 65,650 customers in Utah, with different services provided as follows: 15,218 standalone voice customers; 40,224 bundled service customers, and 10,208 standalone broadband customers. They collect revenues from these customers as follows: (1) $28 per month from 15,218 standalone voice customers for a total of $5,113,248 per year; (2) $18.40 per month for data and $28 per month for voice from 40,224 bundled service customers for a total of $8,881,459 for data per year and $13,515,264 for voice per year, respectively; and (3) $8.97 per month for standalone data from 10,208 standalone broadband customers for a total of $1,466,277 per year. In total, the rate-of-return regulated providers collect $28,976,248 annually from these customers in Utah (the sum of the total annual revenues referenced in (1) + (2) + (3)).

This rate change will generally increase the balance accruing in the UUSF, helping maintain the objective to encourage rate-of-return regulated providers to deploy broadband service in rural areas.

Scenario 1: Assuming the Base Case number of 10,208 standalone broadband customers (i.e., no customers switch to standalone broadband service) and everything else being equal to the Base Case, increasing the rate for wholesale consumer broadband only loops from $8.97 to $25 will result in an increase to the balance accruing in the UUSF of approximately $1,960,000, calculated as follows: Rather than collect $8.97 plus a $3 federal access charge from the standalone broadband customers per month (10,208* ($8.97 + $3) x 12), the providers would collect $25 plus a $3 federal access charge per month, or (10,208* ($25 + $3) x 12). Because the providers would collect this amount from the customers, they would not collect it from the USSF. The only other possible impact on the state budget is the impact on state offices being served by the providers that qualify for UUSF distributions, that may experience an increase in their rates depending on the service taken from their provider.

Scenario 2: Assuming 4,897 of the 40,224 bundled service customers switch to standalone broadband service (resulting in a change to the Base Case numbers of 15,105 standalone broadband customers and 35,327 bundled service customers), increasing the rate for wholesale consumer broadband only loops from $8.97 to $25 will result in a net increase to the balance accruing in the USSF of approximately $882,000. While providers would collect more revenue from standalone broadband customers, they would collect less revenues from the bundled service customers; thus, the net impact would be less revenues collected, as compared to Scenario 1. Specifically, providers would collect $25 plus a $3 federal access charge per month, or (15,105* ($25 + $3) x 12) = $5,075,000 per year. However, the provider would collect less revenue from bundled service customers because only 35,327 will pay for bundled service, as compared to the Base Case 35,327* $18.40 x 12 = $7,800,197 for data bundle, and 35,327* $28 x 12= $11,869,865 for voice bundle. Adding these amounts to the original $5,113,248 in revenues from standalone voice customers which amount did not change, results in total net revenues of $29,858,597, as compared to Base Case revenues of $28,976,248. Because the providers would collect this amount from the customers, they would not collect it from the USSF. The only other possible impact on the state budget is the impact on state offices being served by the providers that qualify for UUSF distributions, that may experience an increase in their rates depending on the service taken from their provider.

Scenario 3: Assuming 8,449 of the 40,224 bundled service customers switch to standalone broadband service (resulting in a change to the Base Case numbers of 18,657 standalone broadband customers and 31,775 bundled.
service customers), increasing the rate for wholesale consumer broadband only loops from $8.97 to $25 will result in a net increase to the balance accruing in the UUSF of approximately $98,000. While providers would collect more revenue from standalone broadband customers, they would collect less revenues from the bundled service customers; thus, the net impact would be less revenues collected, as compared to Scenarios 1 and 2. Specifically, providers would collect $25 plus a $3 federal access charge per month, or (18.657∗($25 + $3) x 12) = $6,269,000 per year. However, the provider would collect less revenue from bundled service customers because only 31,775 will pay for bundled service, as compared to the Base Case 31,775∗$18.40 x 12 = $7,015,920 for data bundle, and 31,775∗$28 x 12 = $10,676,400 for voice bundle. Adding these amounts plus the original $5,113,248 in revenues from standalone voice customers which amount did not change, results in total net revenues of $29,074,320 per year, as compared to Base Case revenues of $28,976,248. The only other possible impact on the state budget is the impact on state governments: would not be required to subscribe to a phone line to get broadband internet access service. In that case, local governments would not be required to subscribe to a phone line to get broadband internet access service.

In summary, the proposed amendments to this rule will not impact state general funds. The UUSF impact is expected to be net positive under the scenarios described above. The estimated impacts in the scenarios contain variables and assumptions that may differ from what actually occurs. Therefore, it is impossible to provide an accurate estimation.

B) Local governments:

The only impact on local governments may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. The proposed rule amendment may incent rate-of-return regulated providers to offer standalone broadband service. In that case, local governments would not be required to subscribe to a phone line to get broadband internet access service.

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

The only impact on small businesses may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. The proposed rule amendment may incent rate-of-return regulated providers to offer standalone broadband service. In that case, small businesses would not be required to subscribe to a phone line to get broadband internet access service.

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

The only impact on non-small businesses may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. The proposed rule amendment may incent rate-of-return regulated providers to offer standalone broadband service. In that case, non-small businesses would not be required to subscribe to a phone line to get broadband internet access service.

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 impact on other persons may be in their capacity as telecommunications customers taking service from rate-of-return regulated providers that are affected by the proposed amendment. The proposed rule amendment may incent rate-of-return regulated providers to offer standalone broadband service. In that case, persons other than local governments, small businesses, and non-small businesses would not be required to subscribe to a phone line to get broadband internet access service.

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

No impact--The proposed rule amendment may incent rate-of-return regulated providers to offer standalone broadband service. In that case, customers would not be required to subscribe to a phone line to get broadband internet access service.

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

These proposed rule amendments comprise the consensus result from an open and public stakeholder process, and they make the PSC's administration of the UUSF more transparent and more consistent with current technology needs and practices. As outlined in the fiscal analyses for this rule change, the impact on individual customers and on the UUSF balances will depend on individual customer choices about the types of service they choose to receive, and on choices made by telecommunications providers who receive UUSF support. For example, providers could charge a different amount than the standard rate established in this rule, but their UUSF support would be calculated as if they charged the standard rate. The PSC is responsible to monitor the rolling balance in the UUSF, and to make future changes to the customer surcharge that provides the UUSF funding in the event the rolling UUSF balance warrants that action.

Thad LeVar, PSC Chair

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)
B) Department head approval of regulatory impact analysis:

The Chair of the Public Service Commission, Thad LeVar, 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 54-3-1 Section 54-4-1 Section 54-8b-15

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: 12/15/2021

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 designer, and title: Thad LeVar, PSC Chair Date: 11/05/2021

R746. Public Service Commission, Administration.
R746-8-100. Authority, Purpose, and Organization.

(1) This rule is adopted under:
(a) [Utah Code] Section 54-8b-10; and
(b) [Utah Code] Section 54-8b-15.

(2) This rule:
(a) governs the methods, practices, and procedures by which:
(b) the UUSF is created, maintained, and funded; and
(c) funds are disbursed from the UUSF to qualifying access line providers.

(3) This rule is organized into the following Parts:
(a) Part 100: Authority, Purpose, and Organization;
(b) Part 200: Definitions; and
(c) Part 300: UUSF Funding; and
d) Part 400: UUSF Distributions.

R746-8-200. Definitions.
The following definitions apply to this rule:

(1) "Access line" as defined at [Utah Code] Subsection 54-8b-2(1), and is used in this rule, Rule R746-8, to the extent consistent with federal law.

(2) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access basis to receive ongoing disbursements from the UUSF.

(a) [For purposes of] In applying the statutory definition of "access line," the term "connection" is as defined at [Utah Code] Subsection 54-8b-15(1) and is used in this rule, Rule R746-8, to the extent consistent with federal law.

(b) Access lines and connections are hereafter referred to jointly as "providers."

(c) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."

(d) "Affordable base rate" or "ABR" may include, if itemized in the provider's Commission-approved tariff:

(i) the applicable UUSF surcharge;
(ii) mandatory extended area service fees; or
(iii) state subscriber line fees.

(e) "Affordable base rate" or "ABR" does not include:

(i) municipal franchise fees; or
(ii) [taxes] taxes; or
(iii) any incidental [surcharges] charges other than those identified in Subsection R746-8-200(2)(b):

(A) included in a Commission-approved tariff; or
(B) authorized under these rules.

Regulatory Impact Table

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(3) "Average remaining life" used in a group depreciation method, means the average of the future life expectancy of the various items in an asset group. Average remaining life is based upon estimates that require periodic review to ensure reasonableness.

(4) "Broadband internet access service" is as defined at Subsection 54-8b-15(1).

(5) "Carrier of last resort" is as defined at Subsection 54-8b-15(1).

(6) "Depreciation" means the gradual conversion of the cost of a tangible capital or fixed asset into an operational expense over the asset's estimated useful life to reflect the reduction in the book value of the asset over time due to use, wear and tear, or obsolescence.

(7) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in Utah.

(8) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:

(a) is designated as an eligible telecommunications carrier by the Commission in accordance with 47 U.S.C. Section 214(e); or

(b) is designated by the FCC as a Lifeline Broadband Provider.[1] [4]

(9) "Facilities-based provider" means a provider that uses:

(a) its own facilities;

(b) essential facilities or unbundled network elements obtained from another provider; or

(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.

(10) "FCC" means the Federal Communications Commission.

(11) "FCC adjusted depreciation rate" means a prescribed depreciation rate that has been adjusted by application of the FCC adjustment formula.

(12) "FCC adjustment formula" means the following formula promulgated by the FCC to be applied periodically to groups of assets in a group asset depreciation method to ensure that the average remaining life and future net salvage value estimates are reasonable and result in the depreciation of a provider's investments on a straight-line basis over the life of the associated plant:

FCC adjusted depreciation rate = 100% - Accumulated Depreciation% - Future Net Salvage%

Average Remaining Life

(13) "FCC approved depreciation method" or "depreciation method allowed by the FCC" means a method of asset depletion for accounting purposes that is approved or permitted by the FCC.

(14) "Future net salvage value" means the estimated gross salvage of the plant less any estimated cost of removal. Future net salvage value is based upon estimates that require periodic review to ensure reasonableness. Future net salvage value may be positive or negative depending on the gross salvage value and the cost of removal.

(15) "Group asset depreciation method" means the depreciation accounting method established in 47 CFR, Subsection 32.2000(e)(1)(i). Group asset depreciation allows the accumulation of multiple similar fixed asset units into a group. The group is treated as a single asset with the aggregate in-service cost base used for depreciation calculations.

(16) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.

(17) "Non-rate-of-return regulated" is as defined at Subsection 54-8b-15(1).

(18) "Prescribed depreciation rate" means the most recent depreciation rate set by the Commission for the provider.

(19) "Provider" means a carrier that provides access lines or functionally equivalent connections.

(20) "Rate-of-return regulated" is as defined at Subsection 54-8b-15(1).

(21) "Wholesale broadband internet access service" is as defined at Subsection 54-8b-15(1).

R746-8-300. UUSF Funding.

The following sections in the 300 series address UUSF Funding.

R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission $0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) Except as provided in Subsection R746-8-301(1)(c)(ii):

(A) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission $0.36 per month per access line for such service, such as new access lines or connections, or recharges for existing lines or connections, purchased on or after January 1, 2018.

(B) Subsection R746-8-301(1)(c)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make
a remittance for an access line under Subsection R746-8-301(1)(c) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(C) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(ii) The charge described in Subsection R746-8-301(1)(a) does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Section 69-2-405(2)(b).

(iii) $0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69% of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31% of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to Subsection R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to Subsection R746-8-301(3)(a) and R746-8-301(3)(a)(ii).

R746-8-302. UUSF Surcharge Remittances.

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total $1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than $1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

R746-8-400. UUSF Distributions.

The following sections in the 400 series address UUSF Distributions.

R746-8-401. Rate-of-Return Regulated Providers.

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) [in compliance] complies with Commission orders and rules;

(c) charges, at a minimum, the affordable base rate of $18 per access line, unless a petition brought pursuant to Subsection R746-8-401(1)(c) is granted after adjudication; [charges, at a minimum, $18 per access line];

(d) includes as revenue, in calculating UUSF support, the amounts described in Subsection R746-8-401(2);

(2) A rate-of-return regulated provider may petition the Commission for a deviation from the minimum revenues described in Subsection R746-8-401(6), that its costs exceed its revenues as required by Section 54-8b-15.

(a) for the sale of wholesale broadband internet access service or broadband internet access service sold in combination with a voice service access line to the same end-user, a reasonable cost-based value per connection per month; and

(b) for the sale of stand-alone wholesale broadband internet access service or stand-alone broadband internet access service a minimum, $25 per connection per month plus an access recovery charge calculated under 47 C.F.R. Subsection 51.917(e) and reflected in the rate-of-return regulated provider’s annual tariff review plan for the sale of stand-alone wholesale broadband internet access service or stand-alone broadband internet access service, unless:

(i) the Commission approves a petition to deviate from the revenue minimum described in Subsection R746-8-401(3); or

(ii) the rate-of-return regulated provider offers wholesale broadband internet access service to a Lifeline subscriber in accordance with Subsection R746-8-401(4).

(2)(a) A rate-of-return regulated provider that files a petition for a deviation from the affordable base rate set forth in Subsection R746-8-401(1)(c) or the wholesale broadband internet access service and broadband internet access service revenue minimum described in Subsection R746-8-401(2)(b), and the Commission shall grant the petition if:

(b) the rate-of-return regulated provider offers wholesale broadband internet access service to a Lifeline subscriber in accordance with Subsection R746-8-401(4).

(a) for a petition to deviate from the affordable base rate [shall] described in Subsection R746-8-401(1)(c), the rate-of-return regulated provider demonstrates to the satisfaction of the Commission:

(i) [demonstrate] that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) the rate-of-return regulated provider imputes income up to the affordable base rate in calculating the provider's UUSF disbursement; or

(iii) the Commission determines that deviation from the affordable base rate is otherwise in the public interest.

(b) for a petition to deviate from the wholesale broadband internet access service or broadband internet access service revenue minimum described in Subsection R746-8-401(2)(b), the Commission determines that the deviation from the minimum revenue amounts is in the public interest.
(4)(a) For calculating UUSF support, a rate-of-return regulated provider may include in revenue a minimum of $18 per connection per month, plus an access recovery charge calculated in accordance with 47 C.F.R. Subsection 51.917(e), if the rate-of-return regulated provider:

(i) elects to offer a stand-alone wholesale broadband internet rate to provide a reduced cost broadband internet access service for eligible Lifeline subscribers, and

(ii) provides the full amount of the wholesale reduction in included revenue to each eligible Lifeline subscriber as a discount to the cost of a broadband internet access service plan.

(b) A rate-of-return regulated provider that elects to provide a reduced cost broadband internet access service or offer a wholesale broadband internet Lifeline rate shall:

(i) provide information to the Division and the Commission detailing the reduced cost broadband internet access service offering or the wholesale broadband internet customer; and

(ii) annually certify that each Lifeline subscriber who subscribes to the reduced cost broadband internet access service offering has received the discount described in Subsection R746-8-401(4)(a)(ii).

(5) The Division shall, consistent with Rule R746-400, (a) prepare an annual report form to be completed by the rate-of-return regulated provider annually that includes an estimate of UUSF support, and

(b) provide the annual report form to each provider, by February 14 each year.

(6) A rate-of-return regulated provider shall file its annual report, in the form provided by the Division in a company specific docket by April 15 including, when available, audited financial statements for the year matching the annual report.

(a) The provider shall include a trial balance matching the audited financial statement and annual report.

(b) The provider may identify and include additional required or needed adjustments.

(7) For the calculation of calculating a rate-of-return regulated provider's ongoing UUSF distribution:[shall conform to the following standards]:

(a) Alternative Connect America Cost Model Funds are considered federal universal service fund revenue under Subsection 54-8b-15(a)(6)(D).

(b) The rate-of-return regulated provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, for the year in which the UUSF distribution is made.[as of the date of the provider's application for support, and as follows:

(i) beginning July 1, 2016: 11.0%

(ii) beginning July 1, 2017: 10.75%

(iii) beginning July 1, 2018: 10.5%

(iv) beginning July 1, 2019: 10.25%

(v) beginning July 1, 2020: 10.0%

(vi) beginning July 1, 2021: 9.75%]

(b)(c) The rate-of-return regulated provider's depreciation costs [shall be] are calculated [as established in Utah Code Section 54-8b-15.] using an FCC-allowed depreciation method and prescribed depreciation rates or FCC adjusted depreciation rates.

(d) The rate-of-return regulated provider may file a petition with the Commission to modify its prescribed depreciation rates.

(8) A rate-of-return regulated provider shall include with its annual report, in the form prepared by the Division under Subsection R746-8-401(5)(a), for each of its accounts:

(a) the depreciation method used;

(b) the current depreciation rate applied; and

(c) an indication of whether the depreciation rate being applied is the Commission prescribed depreciation rate or an FCC adjusted depreciation rate.

(d) A rate-of-return regulated provider using a group asset depreciation method that complies with Subsection R746-8-401(7)(c) and FCC orders, shall periodically apply the FCC adjustment formula to its groups of assets to ensure that the average remaining life and future net salvage value estimates are reasonable and that the resulting effective depreciation rate for assets in each group is reasonably similar to the prescribed rate for the group when considering remaining net value and average remaining life.

(i) When applying the FCC adjustment formula, the rate-of-return regulated provider shall determine the average remaining life of the asset group by reviewing its continuing property records; considering relevant additions, disposals, repairs, obsolescence, and refurbishment of the asset group units associated with an asset group; then identifying whether the asset group unit additions have historically remained in each asset group longer or shorter than the asset group's Commission prescribed life; and using the data to determine an estimated life for typical group additions.

(ii) When applying an FCC adjustment formula, the rate-of-return regulated provider shall:

(A) provide with its annual report a narrative summary and a spreadsheet with formulas intact, that demonstrate its calculation of the average remaining life of the asset group when the provider applies an FCC adjusted depreciation rate including narrative support for any management assumptions used in the calculation; and

(B) certify to the Commission in the annual report that:

(I) its management has reviewed the depreciation rates applied, including any changes to its asset groups and salvage values;

(II) its estimated depreciation expense is consistent with the average remaining life of each asset group;

(III) its depreciation method is an FCC-allowed depreciation method; and

(IV) it has complied with Section R746-8-401.[Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement,]

(9)(a) Annually, the Division shall make a recommendation [of]regarding whether and how each rate-of-return regulated provider's monthly UUSF distribution should be adjusted,[according to:]

(b) The Division shall use the following criteria and inputs in calculating its recommended UUSF distribution:

[1] The current FCC rate-of-return as set forth in Subsection R746-8-401(9)(a)(i)(b); and

[2] the provider's financial information from its last [annual] report filed with the Commission described in Subsection R746-8-401(8).

[3] The Division shall file annually, a non-confidential, non-binding estimate of any UUSF by September 1 in the rate-of-return regulated provider specific docket assigned by the Commission.

(b) The Division shall provide to the rate-of-return regulated provider any analyses and documents, including confidential information, in addition to the information described in Subsection R746-8-401(9), that clearly identifies any adjustments that the Division believes are in the public interest.

(c) Interested parties may seek intervention within 15 days of the Division's filing of the preliminary estimate referred to in Subsection R746-8-401(10)(a).
the entitlement to, and the disbursement of, UUSF funds to non-rate-of-

month; or

(ii)(A) meets FCC broadband Lifeline requirements as set

(i) provides service over landlines; or

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(ii) if the FCC’s national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(b) LifeLine distributions will be based on eligible LifeLine subscribers as of the first day of each month, with no prorated discounts.

(c) waive, for LifeLine subscribers, the following charges:

(ii) remove the Lifeline discount from a Lifeline subscriber’s account within five [5] business days of notification of the Lifeline subscriber’s ineligibility under FCC Lifeline requirements; and

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(e) submit to the Division by May 1 of each year, a complete LifeLine subscriber list, as defined by the FCC.

4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC’s terms and conditions for those additional services.

(ii) the FCC’s national verifier system; or

(i) the FCC’s national verifier system; or

(iii) the appropriate process for resolving the contested issues.

(i) If the Division’s recommendation for a rate-of-return regulated provider's UUSF distribution has been challenged or if the Commission does not approve the recommendations, the rate-of-return regulated provider may continue to receive its current UUSF payments until the Commission has ruled on the challenge.

(i) While the challenge is being adjudicated, the difference between UUSF payments received starting January 1 and the UUSF payment amounts ultimately determined by the Commission, is the overpayment or underpayment of UUSF amounts.

(i) If the approved UUSF monthly distribution amounts are less than the monthly recovery for an overpayment, the rate-of-return regulated provider will be ordered to repay the balance in monthly payments to the UUSF, spread evenly over the remaining months of the calendar year.

(ii) If the approved UUSF monthly distribution amounts are more than the monthly recovery for an underpayment, the rate-of-return regulated provider will be ordered to repay the balance in monthly payments to the UUSF, spread evenly over the remaining months of the calendar year.

(i) disconnect Lifeline telephone service for nonpayment of toll service;

(ii) remove the Lifeline discount from a Lifeline subscriber’s account within five [5] business days of notification of the Lifeline subscriber’s ineligibility under FCC Lifeline requirements; and

(i) disconnect Lifeline telephone service for nonpayment of toll service;

(ii) remove the Lifeline discount from a Lifeline subscriber’s account within five [5] business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(iii) the appropriate process for resolving the contested issues.

(i) The Commission shall file a final recommendation with the Commission by November 1.

(iii) the appropriate process for resolving the contested issues.

(i) The Division shall file the final recommendation with the Commission by November 1.

(ii) If the Division's recommendations are not challenged and the Commission finds the rate-of-return regulated provider's costs and UUSF disbursements to be reasonable, the new UUSF distribution amounts will begin on January 1 of the following year.

(i) If the Division’s recommendation for a rate-of-return regulated provider's UUSF distribution has been challenged or if the Commission does not approve the recommendations, the rate-of-return regulated provider may continue to receive its current UUSF payments until the Commission has ruled on the challenge.

(i) While the challenge is being adjudicated, the difference between UUSF payments received starting January 1 and the UUSF payment amounts ultimately determined by the Commission, is the overpayment or underpayment of UUSF amounts.

(i) If the Division’s recommendations are not challenged and the Commission finds the rate-of-return regulated provider's costs and UUSF disbursements to be reasonable, the new UUSF distribution amounts will begin on January 1 of the following year.

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(i) The Division shall file a final recommendation with the Commission by November 1.
(ii) a signal device; or
(iii) another assistive communication device.
(b) "Audiologist" means a person who:
(i) has a master's or doctoral degree in audiology; or
(ii) holds a Certificate of Clinical Competence in Audiology from the American Speech-Language-Hearing Association or its equivalent.
(c) "Defective" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.
(d) "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.
(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.
(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.
(g) "Speech-Language pathologist" means a person who:
(i) has a master's or doctoral degree in Speech-Language Pathology; and
(ii) holds a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association or its equivalent.
(h) "Severely speech impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.
(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.
(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:
(i) a keyboard;
(ii) an acoustic coupler;
(iii) a display screen;
(iv) a braille display; or
(v) a device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

3. Eligibility.

(a) At a minimum, an applicant shall demonstrate that the applicant:
(i) lives within the State of Utah;
(ii) is:
(A) deaf;
(B) hard of hearing; or
(C) severely speech impaired;
(iii) receives assistance from a low-income public assistance program administered by a state agency; or
(iv) has an income of 200% of the Federal Poverty Guideline or less for the current year; and
(v) is able to send and receive messages with a TDD or other appropriate assistive device.
(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:
(i) a person who is licensed to practice medicine;
(ii) an audiologist;
(iii) an otolaryngologist;
(iv) a speech-language pathologist; or
(v) qualified personnel within a state agency.

4. Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:
(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and
(ii) report, as instructed by the Commission, for training and receipt of the approved device.
(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

5. Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.
(ii) A recipient may not remove an assistive device from the state for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.
(b) A recipient shall be solely responsible for the costs of:
(i) repair of an assistive device, other than for normal wear and tear;
(ii) replacement of an assistive device;
(iii) paper required by an assistive device;
(iv) telephone and internet service; and
(v) light bulbs required by an assistive device.
(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.
(d) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:
(a) no longer intends to reside in Utah;
(b) becomes ineligible pursuant to Subsection R746-8-405(3); or
(c) is notified by the Commission to return the device.

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology
Date of Last Change: July 1, 2021
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10

NOTICE OF PROPOSED RULE

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<tr>
<th>TYPE OF RULE:</th>
<th>Amendment</th>
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<tr>
<td>Utah Admin. Code Ref (R no.):</td>
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Agency Information

1. Department: Transportation
Agency: Motor Carrier
Room no.: Administrative Suite, 1st Floor
Building: Calvin Rampton
Street address: 4501 S 2700 W
City, state and zip: Taylorsville, UT 84114
Mailing address: PO Box 148455
City, state and zip: Salt Lake City, UT 84114-8455
### General Information

**2. Rule or section catchline:**

R909-1. Safety Regulations for Motor Carriers

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

(Why is the agency submitting this filing?):

The Legislature amended Section 72-9-102 of the Motor Carrier Safety Act when passing H.B. 137 during the 2021 General Session. Therefore, the Department of Transportation (Department) proposes these changes to Rule R909-1 to reflect the amendments included in H.B. 137 (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):

These proposed changes amend the definition of an intrastate commercial vehicle by:

1) Increasing the gross vehicle weight rating from 10,001 or more pounds to 26,000 or more pounds if the vehicle is operated by an individual 18 years old or older;

2) Increasing the gross vehicle weight rating from 10,001 or more pounds to 16,001 or more pounds if an individual operates the vehicle under 18 years old;

3) Including in the definition a vehicle with the gross vehicle weight rating of 13,000 or more pounds for a vehicle designed to transport 12 or more passengers for commercial purposes.

These proposed changes also amend portions of this rule to conform this rule to the new definition of intrastate commercial vehicle and make technical and grammatical changes to make this rule consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual.

### Fiscal Information

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

**A) State budget:**

The Department does not anticipate these proposed changes will cause additional costs or savings to the state budget because the proposed changes do not alter the amount of work the Department must do to enforce this rule.

**B) Local governments:**

The Department does not anticipate these proposed changes will cause additional costs or savings to local governments because this rule does not apply to local governments.

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

The Department anticipates the proposed changes will impact many small businesses due to the definition changes for intrastate carriers. These carriers will no longer be subject to the previous regulations required by the Federal Motor Carrier Safety Administration definitions of a commercial vehicle. Examples of savings for small businesses may include less regulation of intrastate daycare vehicles or intrastate lawn care vehicles. However, these savings are impossible to quantify today.

**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 Department does not intend for the proposed changes to impact non-small businesses.

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

There are no anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because such persons are generally not motor carriers.

**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 new compliance costs for affected persons. These proposed rule changes alter definitions so that this rule conforms to the amendment H.B. 137 (2021) made to Section 72-9-102. The amendment did not create new fees.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** *(Include the name and title of the department head):*
These proposed changes to Rule R909-1 will not have a fiscal impact on businesses. Carlos M. Braceras, PE, 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

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B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, 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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: Carlos M. Braceras, PE, Executive Director Date: 10/29/2021

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Authority and Purpose.
The Department makes this rule under the authority of Section 72-9-103 to enable the Department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Definitions.
(1) "Intrastate commercial vehicle" means a motor vehicle, vehicle, trailer, or semitrailer used or maintained for business, compensation, or profit to transport passengers or property on a highway only within the boundaries of this state if the commercial vehicle:
   (a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 26,000 or more pounds and is operated by an individual who is 18 years old or older; or
   (b) is designed to transport more than 15 passengers, including the driver; or
   (ii) is designed to transport more than 12 passengers, including the driver, and has a manufacturer's gross vehicle weight rating or gross combination weight rating of 13,000 or more pounds; or
   (c) is used to transport hazardous materials and must be placarded according to 49 CFR Part 172, Subpart F.

R909-1-3. Adoption of Federal Regulations.
(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Part 385.4, Parts 387 through 399, and Part 40, [c]January 2, 2020[c], as amended by the Federal Register through June 24, 2020, are incorporated by reference, except for 49 CFR Parts 391.11(b)(1) and
Implementation or interpreted law: 72-9-103; 72-9-301; 72-9-303; 72-9-701; 72-9-703

Notice of continuation: August 14, 2021
Date of last change: 2021

KEY: trucks, transportation safety, implements of husbandry

Title 41, Utah Code Annotated
Chapter 6a, Traffic Code. Vehicles
41-1a-102(23) and must comply with all provisions of Chapter 6, Title 49 CFR 171.101, must have a $1,000,000 minimum level of coverage.

(2) An intrastate trucking operation in which the carriers operate double trailer combinations only may not be required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the Department of Public Safety Rules, Driver's License Division, Section 53-3-303.5 for intrastate drivers under Rule 708-34.

(4) A driver involved wholly in intrastate commerce shall be at least 18 years old, unless they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, in which case they must be at least 21 years old.

(5) A licensed childcare provider operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, is exempt from 49 CFR Part 387 Subpart B but is subject to the minimum coverage requirements in Section 72-9-103.


(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) Each intrastate private motor carrier[s] must have a minimum amount of $750,000 liability.

(3) Each interstate and intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material, and hazardous substances defined in 49 CFR 171.101, must have a $1,000,000 minimum level of financial responsibility, and an MCS-90 endorsement maintained at the principal place of business.


"Implements of Husbandry" is defined in Subsection 41-1a-102(23) and must comply with all provisions of Chapter 6, Title 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R982-502. Low-income ADU Loan Guarantee Pilot Program

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

During the 2021 General Session, the Legislature passed H.B. 82, Single-Family Housing Modifications, which requires the Executive Director of the Olene Walker Housing Loan Fund to establish a two-year pilot program to provide loan guarantees for certain loans related to accessory dwelling units (ADU). H.B. 82 (2021) directed the Executive Director to establish rules related to administering the pilot program and granting loan guarantees.

4. Summary of the new rule or change

This proposed rule sets forth the minimum criteria lenders and borrowers must satisfy to participate in the pilot loan guarantee program. This rule also identifies the terms and conditions for loan guarantees provided under the pilot program; and establishes procedures for the pilot program's loan guarantee process.

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 any fiscal impact on state budget revenues or expenditures that...
were not already accounted for by the fiscal note to H.B. 82 (2021).

B) Local governments:
This proposed rule is not expected to have any fiscal impact on local governments’ revenues or expenditures that were not already accounted for by the fiscal note to H.B. 82 (2021).

C) Small businesses (“small business” means a business employing 1-49 persons):
This proposed rule is not expected to have any fiscal impact on small businesses’ revenues or expenditures that were not already accounted for by the fiscal note to H.B. 82 (2021).

D) Non-small businesses (“non-small business” means a business employing 50 or more persons):
This proposed rule is not expected to have any fiscal impact on non-small businesses’ revenues or expenditures that were not already accounted for by the fiscal note to H.B. 82 (2021).

E) Persons other than small businesses, non-small businesses, state, or local government entities (“person” means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This proposed rule is not expected to have any fiscal impact on other persons’ revenues or expenditures that were not already accounted for by the fiscal note to H.B. 82 (2021).

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
This proposed rule is not expected to cause any compliance costs for affected persons because this proposed rule does not create any new administrative fees.

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 proposed rule will not result in a fiscal impact to businesses beyond those already accounted for by the fiscal note to H.B. 82 (2021). Casey R. 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.)

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| Total Fiscal Cost       | $0         | $0     | $0     |
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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     |
| Net Fiscal Benefits     | $0         | $0     | $0     |

B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Workforce Services, Casey R. Cameron, 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 35A-8-504.5

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021
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>Casey R. Cameron, Executive Director</td>
<td>11/01/2021</td>
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R982. Workforce Services, Administration.


R982-502-1. Purpose.

The purpose of this rule is to establish standards and procedures for administering the two-year pilot program to provide loan guarantees on behalf of borrowers to ensure the repayment of low-income ADU loans, and to encourage lenders to provide capital to homeowners to facilitate the construction of accessory dwelling units to rent to low-income renters, to expand the availability of low-income housing in the state.


The legal authority for this rule is found in Section 35A-8-504.5.


(1) Terms used in this rule are defined in Section 35A-8-504.5.

(2) In addition:

(a) "Division" means the Housing and Community Development Division.

(b) "Executive director" means the executive director of the Department of Workforce Services or the executive director's designee.


(1) The executive director may not provide a loan guarantee for a low-income ADU loan under the pilot program unless the criteria set forth in this Section R982-502-4 are satisfied.

(2) The lender:

(a) must be a:

(i) trust company;

(ii) savings bank;

(iii) savings and loan association;

(iv) bank;

(v) credit union; or

(vi) any other entity that provides low-income ADU loans directly to borrowers;

(b) shall agree in writing, in a form determined by the Division, to participate in the pilot program; and

(c) shall make available to prospective borrowers the option of receiving a low-income ADU loan that:

(i) has a term of 15 years; and

(ii) charges interest at a fixed rate;

(d) shall determine whether to make a loan to an eligible borrower, including credit risk evaluations, based on generally accepted lending practices; and

(e) shall assist the loan applicant in the preparation of the loan application and supporting documentation and in the determination of the financial feasibility of the loan.

(3) The borrower:

(a) must be a residential property owner;

(b) shall agree in writing, in a form determined by the Division, to participate in the pilot program; and

(c) shall satisfy the credit evaluation criteria of the lender.

R982-502-5. Lender Responsibilities.

(1) After making a low-income ADU loan, the lender shall monitor the activities of the borrower on a yearly basis during the term of the loan to ensure the borrower:

(a) agrees in writing to participate in the pilot program;

(b) constructs an accessory dwelling unit on the borrower's residential property within one year after the day on which the borrower receives the loan;

(c) complies with Section R982-502-6; and

(d) complies with any other term or condition of the loan.

(2) The lender shall promptly notify the executive director in writing if the borrower fails to comply with any requirement in Subsection R982-502-5(1).

(3) The lender shall perform all necessary and standard loan servicing activities for each loan secured by a low-income ADU loan guarantee.


After receipt of a low-income ADU loan, the borrower shall:

(1) construct an accessory dwelling unit on the borrower's residential property within one year after the day on which the borrower receives the loan;

(2) occupy the primary residence with which the accessory dwelling unit is associated;

(a) after the accessory dwelling unit is completed; and

(b) for the remainder of the term of the loan; and

(3) rent the accessory dwelling unit to a low-income individual:

(a) after the accessory dwelling unit is completed; and

(b) for the remainder of the term of the loan.

(4) If, during the term of the loan, the borrower sells or otherwise conveys or transfers the property with which the accessory dwelling unit is associated, the loan guarantee shall be extinguished at the time of the sale. If the purchaser assumes the loan at the time of sale, the purchaser shall be required to apply for and receive a new loan guarantee under this pilot program.


Unless otherwise mutually agreed upon by the lender and borrower, the low-income ADU loan must:

(1) have a term of 15 years; and

(2) charge interest at a fixed rate.


(1) The Division shall award the administration of the pilot program based on a competitive application process. The Division will publicly issue a request for proposals.

(2) Each application will be reviewed and scored by a committee established by the Division.

(3) Scoring priorities for the award may be established by the Division and, if established, will be included in the request for proposals.


(1) There is created a $500,000 loan loss reserve fund to be used to secure the loan guarantees issued by the Division.

The legal authority for this rule is found in Section 35A-8-504.5.
amount of the Division's loan guarantees under this pilot program may not exceed $500,000.

(2) Division loan guarantees shall not exceed the:
   (a) lesser of 75% of the loan amount or $50,000 per basement
   low-income ADU loan;
   (b) lesser of 50% of the loan amount or $50,000 per garage
   low-income ADU loan; or
   (c) lesser of 25% of the loan amount or $50,000 per detached
   low-income ADU loan.


(1) The term of the loan guarantee will be the shorter of the
   loan term or 15 years.
(2) For each loan guarantee issued by the Division:
   (a) the borrower's property shall carry a recorded deed
      restriction:
      (i) requiring the accessory dwelling unit to be rented to
         persons whose annual income does not exceed 80% of the area
         median income as determined by the U.S. Department of Housing and
         Urban Development; and
      (ii) running for the term of the loan or until the loan is paid in
         full; and
   (b) the lien position for the low-income ADU loan shall be
      limited to first, second, or third position.


(1) In addition to any event of default defined in the contract
   between lender and borrower, any violation by the borrower of any part
   of Section R982-502-6 shall be considered a default.
(2) After a loan is in default for a period of 90 days, the lender
   shall, within 10 days, notify the Division of the default and recommend
   a course of action.
(3) Upon collection of the amount guaranteed, any excess
   funds collected shall be applied first to principal and then to interest
   and be paid to the lender.


Reasonable and customary fees for loan origination shall be
negotiated between borrowers and lenders.

KEY: Single family housing modifications, accessory dwelling units

Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 35A-8-504.5

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R990-200 Filing ID
54023

Agency Information

1. Department: Workforce Services
Agency: Housing and Community Development
Building: Olene Walker Building
Street address: 140 E 300 S
City, state and zip: Salt Lake City, UT 84111
Mailing address: PO Box 45249

City, state and zip: Salt Lake City, UT 84145-0249

Contact person(s):

Name: Amanda McPeck Phone: 801-526-9653
Email: ampeck@utah.gov

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

General Information

2. Rule or section catchline:
R990-200. Private Activity Bonds

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):
The reason for this change is to add and update
definitions; clarify who is eligible to apply for an allocation
of volume cap from the Private Activity Bond Review
Board; make permanent the emergency rescission of this
rule that required recipients to relinquish volume cap
before applying for additional volume cap; detail what
happens to a recipient's allocation when ownership or
management of the recipient entity changes; explicitly
reference the location for applicant or recipient to locate
the amount of all required fees; align this rule timeline with
the governing statute's timeline; and provide clarity
regarding the circumstances allowing the Board to revoke
a volume-cap allocation.

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 adds a definition of "voluntary
relinquishment" and provides a more detailed definition of
"good standing." The current version of "good standing" is
not specific enough to relate to matters recipients have
previously had before the Board of Review. The change
provides detail about the pre-filing time period to which the
Board of Review will be able to refer when examining an
applicant's financial and professional history and provides
detail about the specific documents that applicants must
submit and what happens when they fail to submit them.
The change removes the requirement that recipients
relinquish previous allocations before applying for
additional allocation. The change gives the Board of
Review authority to examine a recipient's ownership
changes and determine if their allocation should be
rescinded based on new owners' or managers' background.
The change directs applicants and recipients to a fee schedule on the Department of Workforce
Services' website. The current 95-day extension period is
changed to a 90-day period, resolving a five-day
discrepancy between the statute and the current rule. The
change also details what happens when a recipient does
not attend a Board of Review meeting.

NOTICES OF PROPOSED RULES
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 revenues or expenditures. There are no additional state employees or resources needed to oversee this rule change. This rule change will not increase workload and can be carried out with existing budget. This rule change does not change the current available bond cap.

B) Local governments:
This rule change is not expected to have any fiscal impact on local governments’ revenues or expenditures because the program does not rely on local governments for funding, administration, or enforcement.

C) Small businesses ("small business" means a business employing 1-49 persons):
There may be a positive fiscal impact for a project that is able to receive additional funding with this rule change. The amount will vary with each individual project and is unable to be calculated, but the change will enable some projects, which have incurred additional construction costs due to market conditions, to continue to move forward with their project without relinquishing already allocated bond cap. However, this rule change does not change the current available bond cap.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There may be a positive fiscal impact for a project that is able to receive additional funding with this rule change. The amount will vary with each individual project and is unable to be calculated, but the change will enable some projects, which have incurred additional construction costs due to market conditions, to continue to move forward with their project without relinquishing already allocated bond cap. However, this rule change does not change the current available bond cap.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local governmental entities. This rule change requires no action or compliance by any persons.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs for affected persons because the change does not create any new administrative fees.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
This rule change may have a positive fiscal impact on businesses that qualify for additional funding, but will not change the available bond cap. Casey R. Cameron, Executive Director

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

Regulatory Impact Table

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Fiscal Benefits

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B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Workforce Services, Casey R. Cameron, has reviewed and approved this fiscal analysis.
Terms not defined in that section or in these rules shall be:

(a)  the Private Activity Bond Authority Application for Single Family or Student Loan applicants.

(b)  the Private Activity Bond Authority Manufacturing Facility Application for the manufacturing, redevelopment or exempt facility applicants; or

(c)  the Private Activity Bond Authority Application for Single Family or Student Loan applicants.

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: 12/15/2021

10. This rule change MAY become effective on: 12/22/2021

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: | Casey R. Cameron, Executive Director | Date: 10/15/2021 |

R990. Workforce Services, Housing and Community Development.

R990-200. Private Activity Bonds.

R990-200-3. Definitions.

Terms used in these rules are defined in Section 35A-8-2102.

Terms not defined in that section or in these rules shall be defined as used and characterized in the Private Activity Bonds Application, Scoring Criteria, and other Board of Review authorized documents. In addition:

(1)  "Affordable" means at least 20% of the residential units in the project are set aside for families whose incomes do not exceed 50% of Area Median Income (AMI), adjusted for family size; or at least 40% of the residential units in the project are set aside for families whose incomes do not exceed 60% of AMI, adjusted for family size.

(2)  "Applicant" means a borrower or issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(3)  "Available Volume Cap" means the unencumbered volume cap.

(4)  "Application" means:

(a)  the electronic [state of Utah] Federal Low-Income Housing Credit Consolidated Application for multi-family applicants;

(b)  the Private Activity Bond Authority Manufacturing Facility Application for the manufacturing, redevelopment or exempt facility applicants; or

(c)  the Private Activity Bond Authority Application for Single Family or Student Loan applicants.

(5)  "Closed" or "close" means the time at which bonds are exchanged for funds.

(6)  "Good standing" means the applicant or recipient has, for the immediately preceding five years:

(a)  timely remitted to the Board of Review all required fees and payments;

(b)  timely submitted to the Board of Review all required reports;

(c)  has not failed to close any projects for which the Board of Review has made an allocation; and

(d)  has not made to the Board of Review any misrepresentations about an application for allocation or any previous or current project.

(e)  In addition, for multi-family projects for which the Board of Review has provided allocations, the applicant or recipient, for the immediately preceding five years:

(i)  has not exceeded rent or income limits,

(ii)  has not converted any affordable unit into a market rate unit, and

(iii)  has rented designated affordable units only to qualified Low and Moderate Income tenants.

(7)  "Project" means the applicant's plan for which the private activity bonds are being sought.

(8)  "Recipient" means a borrower or issuing authority that has been awarded an allocation of volume cap.

(9)  "Low and Moderate Income" means a household whose income upon initial occupancy does not exceed 140% of AMI adjusted for family size.

(10)  "Market Rate" means housing units that are not affordable.

(11)  "Voluntary relinquishment" means a recipient's decision, made of the recipient's own volition, to relinquish all or part of a previously awarded allocation.

R990-200-4. Applicant Qualifications.

(1)  An application will be presented to the Board of Review only if each project applicant, owner, developer, and manager:

(a)  is in good standing;

(b)  in the ten years preceding the filing date of the application, has not been disbarred or otherwise sanctioned in any way by any state or federal agency or professional self-regulatory body;

(c)  in the ten years preceding the filing date of the application, has not been a partner, director, or other officer exercising managerial control over any business entity---including a corporation, limited liability company, or professional limited liability company---when said business entity has initiated bankruptcy proceedings within the previous ten years;

(d)  has not been in default or breach of any mortgage or project-related contract within the previous five years; and

(e)  is not the subject---in either a personal or professional capacity as a partner, director, or other officer exercising managerial control over any business entity---of a pending fair[-]housing or civil[-]rights investigation and has not, in the [or, within the previous ten years],

(2)  An application shall include documentation executed by each applicant, owner, developer, and manager certifying that each signatory meets each requirement identified in Subsection R990-200-4(1).

(a)  An application shall include documentation supporting and verifying the accuracy of each certification.
(3) Each applicant shall provide all necessary and required materials and supporting documents at least 45 days before the Board of Review meeting at which the application will be considered.

(4) Application forms and materials are available on the Department of Workforce Services Housing and Community Development website.

(5) An application will not be considered until all necessary and required materials are provided and complete.

(6) An incomplete application will be returned to the applicant without further action. The applicant will have the opportunity to correct any defect or provide any missing required documentation, subject to the submission deadline specified in Subsection R990-200-4(3).

(7) No new, additional, or replacement documentation will be accepted after the application submission deadline specified in Subsection R990-200-4(3).


(1) Private activity bond volume cap allocations are made each calendar year based upon available volume cap.

(a) The decision whether to allocate volume cap to an applicant shall be determined by the Board of Review, in its sole discretion.

(b) Allocations are not made on a first-come-first-served basis.

(c) Each complete application submitted before the deadline will be evaluated and scored in comparison with other applications for the same type of project use. The weight each evaluation criteria is given is as identified on the score sheet approved by the Board of Review.

(d) The private activity bond program staff and consultants under contract with the Board of Review will evaluate and score each application. In the event demand for funding exceeds the available volume cap, applications will be numerically ranked for allocation.

(e) When considering multiple applications at a meeting, the Board of Review may choose to award each applicant an equal share, pro rata share, priority for Multi-Family Housing or other classification, or other division of available volume cap.

(2) When deciding to allocate volume cap to an applicant, the Board of Review shall consider the criteria outlined in Section 35A-8-2105 and the following additional criteria:

(a) timely submission of completed application;

(b) timely payment of applicable fees;

(c) applicant's experience in successfully completing projects utilizing private activity bonds;

(d) project financing, including executed letters of intent for debt and equity funding;

(e) project readiness, including required public entity approvals, site ownership, and architect and construction contracts;

(f) timely response to any questions requested by the Board of Review and private activity bond program staff;

(g) status of project's financing at time of application;

(h) appointment of bond counsel;

(i) letter from bond counsel opining the project qualifies for private activity bonds;

(j) appointment of investment banker or, if private placement, buyer of the bonds;

(k) detailed commitment letters from financial entities involved;

(l) ability to cause bonds to be issued within 12 months of allocation;

(m) past history of forfeited allocation commitments;

(n) length of tax-exempt bond amortization; and

(o) other factors considered appropriate by the Board of Review.

(3) Multi-Family Housing applicants must meet the criteria of the Low-Income Housing Tax Credit Program administered by the Utah Housing Corporation. In addition to the criteria in Subsection R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to Multi-Family Housing applicants:

(a) bond amount per unit;

(b) bond amount per affordable unit;

(c) the percentage, in relation to the group of applications currently being evaluated, of the private activity bond allocation being requested;

(d) percentage of public financing, including the value of grants, loans, fee waivers, and concessions, but excluding housing tax credits;

(e) total cost per unit and per unit square footage;

(f) percentage of developer fee contributed to project;

(g) percentage of affordable units;

(h) percentage of special needs units;

(i) cash flow per unit;

(j) percentage of taxable bonds;

(k) location, with preference for projects located in:

(i) underserved areas;

(ii) communities without the same type of projects and difficult to develop areas as defined by HUD;

(l) project characteristics, including:

(i) day care;

(ii) education center;

(iii) mixed income projects, with both affordable and market rate units and

(iv) size of proposed project;

(m) mitigation of environmental issues, including installing radon gas extraction fans or removing the source of radon; and

(n) acquisition, rehabilitation, and remediation of buildings with Utah or federal historic designation, including removal of hazards and including appraisals and a relocation plan for current residents.

(4) In addition to the criteria in Subsection R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to Multi-Family Housing applicants:

(a) new full-time-equivalent job creation, including a list of new positions and wages, and excluding construction and other temporary jobs;

(b) retention of jobs;

(c) training and education of employees;

(d) bond amount to permanent full-time-equivalent jobs ratio;

(e) permanent full-time-equivalent jobs created or retained that provide above average wages when compared to other applicants' average wages and the community average wage;

(f) demonstrated need for tax-exempt financing, including:

(i) projected cash flow for the first three years of operation, including supporting documentation, and

(ii) explanation for selecting variable or fixed rates;

(g) community support, including:

(i) financial support;

(ii) zoning approval;
(i) If the Board of Review votes to require relinquishment, the relinquishment shall become effective on a date specified by the Board of Review on the record at the meeting at which it votes.

(ii) If the Board of Review votes not to require relinquishment, the allocation shall remain in effect. Within ten business days of the Board of Review's vote, each new owner or manager shall provide to the chair a signed acknowledgement that the recipient is bound by all terms and conditions in the Certificate of Allocation. If any new owner or manager fails to submit such an acknowledgement as required, the Board of Review reserves the right to vote at the next Board of Review meeting to require relinquishment of the allocation.

(d) If a recipient fails to make the Board of Review aware of a change or anticipated change in ownership in keeping with Subsection R990-200-205(7)(a), the Board of Review reserves the right, in its sole discretion, to take either or both of the following actions:

1. revoke the recipient's allocation at the first Board of Review meeting following the date on which the Board of Review became aware of the change or anticipated change in ownership;
2. prohibit the recipient from applying for any additional volume cap allocations for one year following the date on which the Board of Review became aware of the change or anticipated change in ownership.

(e) Subsection R990-200-5(7) shall not apply when the recipient is one of the following:

1. the state or any of the state's agencies, institutions, or divisions;
2. any county, city, or town in the State or any of a county, city, or town's agencies, institutions, or divisions.

R990-200-6. Fees.

(1) An application fee shall be submitted together with the application.

(2) An extension fee shall be submitted together with the extension request.

(3) A certificate fee shall be submitted upon award of allocation and before issuance of a certificate.

(4) An application, extension request, or other action may not be processed or added to the Board of Review agenda until required fees are paid.

(5) Fees are non-refundable.

(6) The Board shall ensure that the dollar amounts for the fees described in Subsections R990-200-6(1) through (5) shall be clearly listed on a fee schedule adopted by the Board of Review and posted on the Utah Department of Workforce Services' website.

R990-200-7. Extensions.

(1) Certificates of allocation shall remain in effect for a period of 90 days following the date of Board of Review approval. A recipient that has not closed its volume cap allocation within such 90-day period must request an extension from the Board of Review. A recipient requesting an extension shall submit to the Board an application for an extension no later than 90 calendar days prior to the date on which the Board of Review's approval of the initial allocation is scheduled to expire.

(2) Certificates of allocation shall remain effective until the Board of Review has held a meeting and decided whether to require relinquishment.

(3) The Board of Review will make every effort to hold a meeting before the effective date of the change in ownership. At said meeting, the Board of Review shall decide, in its sole discretion, whether to require relinquishment of the recipient's allocation. If the Board of Review votes not to require relinquishment, the allocation shall remain in effect.
application for extension shall be approved or denied in the Board of Review's sole discretion.

(a) Manufacturing projects, qualified redevelopment projects, and exempt facility projects are not eligible to carry forward their volume cap allocation beyond the end of the calendar year in which they received the allocation. [The] Such bonds must close by the third Saturday in December in the same year the recipient received the allocation. Any volume cap not issued by this date is automatically relinquished back to the Board of Review.

(b) The Board of Review makes no representation as to whether an issuer will allow the allocation to be transferred to another project if the previously approved transaction fails.

(2) A recipient requesting an extension of a previously approved and current volume cap allocation shall submit a completed extension form to the private activity bond[Private Activity Bond] program staff no later than 21 calendar days before the Board of Review meeting.

(3) An extension request will not be presented to the Board of Review if the request for an extension is received more than 20 months after the initial allocation.

____(4)____ An extension request will not be presented to the Board of Review unless the recipient's account is in good standing.

(4)[5] An extension request for a second or more extension will be evaluated, scored, and considered, by the Board of Review, subject to [the provisions of Subsection R990-200-7(6)[8]].

(5)[6] An extension approval may not exceed [ninety-five (95)] 90 calendar days from the date of approval or until the Board of Review holds its next date of the next Board of Review meeting, whichever is sooner.

(6) A recipient requesting a second or more extension shall submit a completed extension request status report and extension fee, no later than 21 calendar days before the Board of Review meeting, on the form provided on the website of the Board of Review, together with each request.

(a) Private activity bond[Activity Bond] program staff shall perform a comprehensive progress review before the Board of Review meeting where an extension will be considered, and shall prepare a recommendation.

(b) The applicant may be required to reapply after the third extension review if there is no substantial evidence of being able to close the bonds.

(7) A recipient may not receive more than five extensions. A request for a sixth or more extension will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(8)[9] Except as provided in Subsection R990-200-7(8)[c], a[A] recipient requesting an extension shall attend, either virtually or in person, the Board of Review meeting at which the extension is considered, prepared to update the Board of Review on the progress of the development and answer any questions. If the recipient does not attend, the Board of Review will table consideration of the extension. Within 48 hours of the Board meeting at which the extension was to be considered, the recipient shall submit to the Board of Review a written explanation of its failure to attend. The extension will be considered at the following Board of Review meeting, and the Board of Review, in its sole discretion, shall approve or deny the extension request at that time.

(b) When a recipient fails to attend a meeting, the Board of Review shall treat such a missed meeting as a granted extension request, such that the missed meeting will count as one of the five extensions a recipient is allowed under these rules.

(c) Subsections R990-200-7(8)(a) and (b) shall not apply when the Board of Review determines, in its sole discretion, that the recipient's failure to attend a meeting is the result of extraordinary circumstances beyond the recipient's control. Even in such extraordinary circumstances, though, a recipient shall make every effort to send a designee to attend and provide updates at the meeting. Any such designee shall speak on behalf of the recipient, and the recipient will be bound by the designee's representations to the Board of Review.

(9)[10] A City or County issuer may submit a request for a Carryforward Certificate no later than 21 calendar days before the December Board of Review meeting.

(10) A City or County issued a Carryforward Certificate shall comply with the extension request requirements for each three month period after an allocation has been made to a project, including[ but not limited to]:

(a) attendance at each Board of Review meeting, prepared to update the Board of Review on the progress of the development and answer any questions, and

(b) submission of a complete comprehensive progress report.

(11) Allocations to the Utah Housing Corporation, a municipality, a county, or a public university may be extended for no more than three years.

(12) Allocations that are not issued in the same calendar year may be carried forward but may not be extended.

(13) The Board of Review reserves the right to approve or reject an extension or Carryforward Certificate in accordance with the criteria established by this rule[Rule].

(14) In the event an extension or Carryforward Certificate request is untimely, denied by the Board of Review in its sole discretion, or otherwise not presented to the Board of Review in accordance with these rules[Rules], the allocation shall be revoked.


(1) The Board of Review reserves the right to revoke a recipient's allocation and authority to issue the bonds if there is credible information that a material misrepresentation was presented to the Board of Review or any of its members.

(2) The Board of Review reserves the right to revoke a recipient's allocation if:

(a) the project's total number of affordable units [are] is reduced by 10% or more from the projection on which the recipient received the allocation;

(b) the project's total number of units [are] is reduced by 15% or more from the projection on which the recipient received the allocation;

(c) the site location of the project is changed from the site the Board of Review considered when it approved the allocation;

(d) total costs per unit are increased by 15% or more over the cost projection on which the recipient received the allocation;

(e) total project costs are increased by 20% or more over the cost projection based on which the recipient received the allocation; or

(f) the Board of Review---at any time, based on the totality of circumstances, and in its sole discretion---[j] determines there is no substantial evidence the recipient will be able to timely close the bonds.

(3) If the recipient is in good standing, a recipient that has had its allocation revoked based on one or more of the factors listed at subsections R990-200-8(2)[a] through (e) may submit a new application with updated information for a volume cap allocation, and the application will be considered on equal footing with all other new
applications. A voluntary relinquishment shall not be considered a failure to close under Subsection R990-200-3(6) and shall not count against a recipient in determining a recipient's good standing.

KEY: allocation, private activity bond, volume cap
Date of Last Change: 2021[July 30, 2019]
Authorizing, and Implemented or Interpreted Law: 35A-8-2104

End of the Notices of Proposed Rules Section
NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.........) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the **Utah Administrative Code**.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

### NOTICE OF EMERGENCY (120-DAY) RULE

<table>
<thead>
<tr>
<th>Utah Admin. Code</th>
<th>Ref (R no.)</th>
<th>Filing ID</th>
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<tbody>
<tr>
<td>R414-524</td>
<td></td>
<td>54062</td>
</tr>
</tbody>
</table>

#### 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

#### 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:**

   R414-524. American Rescue Plan Act, Home and Community-Based Services Enhanced Funding

3. **Effective Date:**

   10/29/2021

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

   The purpose of this rule is to implement Section 9817 of the American Rescue Plan Act of 2021 (ARPA), to assist providers of home and community-based services (HCBS).

5. **Summary of the new rule or change (What does this filing do?):**

   This rule enacts supplemental payments to HCBS providers, as allowed under ARPA, to provide economic relief to businesses affected by the Coronavirus (COVID-19) pandemic.
NOTICES OF 120-DAY (EMERGENCY) RULES

6. A) The agency finds that regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:
This emergency rule is needed to provide economic relief to HCBS providers and businesses affected by the COVID-19 pandemic.

Fiscal Information

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

A) State budget:
The Department of Health expects annual costs to be about $9,996,378 during the public health emergency period.

B) Local governments:
There is no impact on local governments as they neither fund nor provide HCBS under the Medicaid program.

C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses may see a share of $9,996,378 in supplemental payments during the public health emergency period.

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):
HCBS providers may see a share of $9,996,378 in supplemental payments during the public health emergency period.

E) 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 as this rule only supplements business revenue and increases access to services.

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):
Businesses may receive supplemental payments to mitigate lost revenue incurred during the public health emergency period. Nate Checketts, Executive Director

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:

Section 26-1-5
Section 26-18-3
Pub. L. No. 117-2

Agency Authorization Information

| Agency head or designee, and title: | Nate Checketts, Executive Director | Date: 10/15/2021 |

R414-524. American Rescue Plan Act, Home and Community-Based Services Enhanced Funding.

R414-524-1. Introduction and Authority.
(1) This rule enacts supplemental payments to eligible providers as authorized under the American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2, Sec. 9817.

(2) This rule is authorized under Attachment 4.19-B of the Utah Medicaid State Plan, Utah's approved home and community-based services (HCBS) waiver implementation plans, and by Sections 26-1-5 and 26-18-3.

(1) Eligible billing providers include providers who bill for services provided under Utah's approved 1915(c) HCBS waivers, and for services delivered through both traditional and self-administered service provider arrangements.

(2) State plan services delivered through fee-for-service or managed-care payment arrangements include the following:

(a) home health services;
(b) private duty nursing for in-home services only;
(c) hospice services for in-home services only;
(d) personal care services;
(e) case management;
(f) school-based services;
(g) rehabilitative services for outpatient mental health and substance use treatment services; and

(h) early and periodic screening, diagnostic, and treatment for autism spectrum disorder-related services.

(3) Eligible services include services approved by the Centers for Medicare and Medicaid Services for the HCBS Enhanced Funding Spending Plan.

(1) In order to qualify for this supplemental payment, eligible billing providers must complete an attestation of the following:

(a) an understanding that these are time-limited payments;
(b) an agreement that providers use a portion of the funds to address direct-care worker issues; and
(c) an agreement that providers use funds to expand, enhance, or strengthen HCBS or other applicable services authorized under ARPA Section 9817.

(2) A provider's attestation applies until the end of the program or until the provider's attestation is rescinded in writing.
(3) If a provider makes an attestation no later than March 31, 2022, the attestation becomes effective retroactively to April 1, 2021.

(4) An attestation provided in any subsequent quarter is effective only back to the first day of the quarter in which the attestation is made.


(1) The Department makes time-limited quarterly supplemental payments to eligible providers for the period authorized under ARPA, April 1, 2021, through March 31, 2024.

(2) An eligible provider's completed attestation allows the first and subsequent supplemental payment calculations.

(3) Payments are calculated based on the methodology described in the Utah Medicaid State Plan and 1915(c) waiver implementation plans.

KEY: Medicaid
Date of Last Change: October 29, 2021
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

End of the Notices of 120-Day (Emergency) Rules Section
FIVE-YEAR NOTICES OF REVIEW
AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW); or amend the rule by filing a PROPOSED RULE and by filing a REVIEW. By filing a REVIEW, the agency indicates that the rule is still necessary.

A REVIEW is not followed by the rule text. The rule text that is being continued may be found in the online edition of the Utah Administrative Code available at 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.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.)</th>
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<tbody>
<tr>
<td>R156-40a</td>
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</table>

Agency Information

1. Department: Commerce
2. Agency: Occupational and Professional Licensing
4. Street address: 160 E 300 S
5. City, state and zip: Salt Lake City, UT 84111-2316
6. Mailing address: PO Box 146741
7. City, state and zip: Salt Lake City, UT 84114-6741
8. Contact person(s):
   - Name: Jeff Busjahn
   - Phone: 801-530-6789
   - Email: jbusjahn@utah.gov

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

General Information

2. Rule catchline:
   - R156-40a. Athletic Trainer 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 40a, provides for the licensure and regulation of athletic trainers 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 Athletic Trainers 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 40a, with respect to athletic trainers.
   - 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 40a. 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

<table>
<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Date: 06/18/2021</th>
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<tbody>
<tr>
<td>Mark B. Steinagel, Division Director</td>
<td></td>
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</tbody>
</table>
### General Information

**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 and zip:** Salt Lake City, UT 84111-2316
6. **Mailing address:** PO Box 146741
7. **City, state and zip:** Salt Lake City, UT 84114-6741

**Contact person(s):**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Jana Johansen</td>
<td>801-530-6621</td>
<td><a href="mailto:janajohansen@utah.gov">janajohansen@utah.gov</a></td>
</tr>
</tbody>
</table>

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

### General Information

**Agency Information**

1. **Department:** Environmental Quality
2. **Agency:** Waste Management and Radiation Control, Radiation
3. **Room no.:** Second Floor
4. **Building:** MASOB
5. **Street address:** 195 N 1950 W
6. **City, state and zip:** Salt Lake City, UT 84116
7. **Mailing address:** PO Box 144880
8. **City, state and zip:** Salt Lake City, UT 84114-4880

**Contact person(s):**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
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<tbody>
<tr>
<td>Tom Ball</td>
<td>801-536-0251</td>
<td><a href="mailto:tball@utah.gov">tball@utah.gov</a></td>
</tr>
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</table>

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

### General Information

1. **Department:** Environmental Quality
2. **Agency:** Waste Management and Radiation Control, Radiation
3. **Room no.:** Second Floor
4. **Building:** MASOB
5. **Street address:** 195 N 1950 W
6. **City, state and zip:** Salt Lake City, UT 84116
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Please address questions regarding information on this notice to the agency.

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.):</th>
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<tbody>
<tr>
<td>R156-41</td>
<td>50272</td>
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<tr>
<td>R313-15</td>
<td>52329</td>
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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 41. 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.
Subsection 19-3-104(4) allows the Waste Management and Radiation Control Board to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government. The subsection also allows the Board to make rules as necessary for controlling exposure to sources of radiation that constitute a significant health hazard. As part of the state primacy of the radiation control program, the provisions in Rule R313-15 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses issued by the Director. This rule is designed so the total dose of radiation to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

Agency Authorization Information

<table>
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<tr>
<th>Agency head or designee, and title:</th>
<th>Douglas J. Hansen, Division Director</th>
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<tr>
<td>Date:</td>
<td>10/19/2021</td>
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General Information

2. Rule catchline:

R313-21. General Licenses

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 19-3-104 allows the Waste Management and Radiation Control Board to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government. The section also requires the licensing of all sources of ionizing radiation and allows the Division of Waste Management and Radiation Control to require licensing of radiation sources that constitute a significant health hazard. As part of the state primacy of the radiation control program, the provisions in Rule R313-21 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.
Agency Authorization Information

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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R313-24 Filing ID: 50721

Agency 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: Tom Ball Phone: 801-536-0251 Email: tball@utah.gov

Please address questions regarding this notice to the agency.

General Information

2. Rule catchline:

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 19-3-104 allows the Waste Management and Radiation Control Board to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government. The section also allows the Board to make rules regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material including establishment requirements for the licensing, operation, decontamination, and decommissioning, and the reclamation of sites, structures, and equipment used in conjunction with these activities. As part of the state primacy of the radiation control program, the provisions in Rule R313-24 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it prescribes requirements for possession and use of source material in milling operations. It also establishes requirements for receipt, possession, and disposal of byproduct material. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

Agency Authorization Information

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<td>Douglas J. Hansen, Division Director</td>
<td>10/19/2021</td>
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R313-30 Filing ID: 50723

Agency 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: Tom Ball Phone: 801-536-0251 Email: tball@utah.gov
Agency 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: 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 catchline:
R313-30. Therapeutic Radiation Machines

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 19-3-104 allows the Waste Management and Radiation Control Board to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government. The section also allows the Board to make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard. As part of the state primacy of the radiation control program, the provisions in Rule R313-30 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it establishes requirements for use of therapeutic radiation machines that are in addition to, and not in substitution for, other applicable provisions of the rules found in Title R313. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

Agency Authorization Information

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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code: R313-34
Ref (R no.): Filing ID: 50732

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

UTAH STATE BULLETIN, November 15, 2021, Vol. 2021, No. 22 191
used to irradiate objects or materials using gamma radiation that are in addition to, and not in substitution for, other applicable provisions of the rules found in Title R313. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it establishes radiation safety requirements for registrants who use electronic sources of radiation for industrial radiographic applications, analytical applications or other non-medical applications that are in addition to, and not in substitution for, other applicable provisions of the rules found in Title R313. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.
**Agency Authorization Information**

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<tr>
<th>1. Department:</th>
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<td>Agency:</td>
<td>Waste Management and Radiation Control, Radiation</td>
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<tr>
<td>Room no.:</td>
<td>Second Floor</td>
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<tr>
<td>Building:</td>
<td>MASOB</td>
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<tr>
<td>Street address:</td>
<td>195 N 1950 W</td>
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<tr>
<td>City, state and zip:</td>
<td>Salt Lake City, UT 84116</td>
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<td>Salt Lake City, UT 84114-4880</td>
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<tr>
<td>Contact person(s):</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td>Phone:</td>
</tr>
<tr>
<td>Tom Ball</td>
<td>801-536-0251</td>
</tr>
</tbody>
</table>

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

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**General Information**

2. **Rule catchline:**

R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

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 19-3-104 allows the Waste Management and Radiation Control Board to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government. The section also allows the Waste Management and Radiation Control Board to make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard. As part of the state primacy of the radiation control program, the provisions in Rule R313-37 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

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 the last five-year review, there have been no comments from interested persons specifically supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it prescribes requirements for the physical protection of radioactive materials for a licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material. The requirements are in addition to, and not in substitution for, other applicable provisions of the rules found in Title R313. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

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**Agency Authorization Information**

<table>
<thead>
<tr>
<th>Utah Admin. Code Ref (R no.):</th>
<th>R313-38</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing ID:</td>
<td>50730</td>
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</table>
This rule is necessary because it prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging. This rule also prescribes radiation safety requirements for persons using licensed materials in these operations. The requirements are in addition to, and not in substitution for, other applicable provisions of the rules found in Title R313. As an Agreement State, this rule maintains the appropriate regulatory compatibility with the NRC. Therefore, this rule should be continued.

There have been no opposing comments to this rule since the last five-year review in 2017.

This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

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:

One local health department wrote that this is one of the most important environmental health rules in the state.

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 sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.
General Information

2. Rule catchline:

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 26-15-2, 26-1-30, and 26-1-5.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments 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 establishes minimum standards for the design, construction, operation, maintenance, and sanitation of a school, and provides for the prevention and control of hazards associated with a school that are likely to adversely affect public health and wellness including risk factors contributing to injury, sickness, death, disability, and the spread of disease. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

Agency Authorization Information

| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: 10/21/2021 |

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R392-300 Filing ID: 50921

Agency Information

1. Department: Health
Agency: Disease Control and Prevention, Environmental Services
Room no.: Second Floor
Building: Cannon Health Building
Street address: 288 N 1460 W
City, state and zip: Salt Lake City, UT 84116
Mailing address: PO Box 142102
City, state and zip: Salt Lake City, UT 84114-2102

Contact person(s):

| Name: Karl Hartman | Phone: 801-538-6191 | Email: khartman@utah.gov |

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

General Information

2. Rule catchline:
R392-300. Recreation Camp Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsection 26-1-30(23).

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:
One local health department wrote, "We are glad to have this rule in order to provide some minimum standards for campgrounds. Future revisions could include updating the definition of "Modern camp" as industries push for semi-permanent structures like yurts, wall tents, tepees, etc."

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 sets standards for the health, safety, and welfare of individuals and for the prevention of the spread of disease in or from a recreational camp. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

Agency Authorization Information

| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: 10/21/2021 |

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R392-301 Filing ID: 50927

Agency Information

1. Department: Health
Agency: Disease Control and Prevention, Environmental Services
Room no.: Second Floor
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**General Information**

2. **Rule catchline:**

   R392-301. Recreational Vehicle Park Sanitation

3. **A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

   This rule is authorized under Sections 26-1-5, 26-7-1, 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23).

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:**

   One local health department wrote, "We are glad to have this rule in order to provide some minimum standards for RV Parks. We are seeing more and more mixed-use properties that include hotel rooms, yurts, RV spots, etc." No comments received in opposition 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 establishes minimum standards for the sanitation, operation, and maintenance of a recreational vehicle park and provides for the prevention and control of health hazards associated with a recreational vehicle park that are likely to affect individuals dwelling temporarily therein including risk factors contributing to injury, sickness, death, and disability. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

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<tr>
<th>Agency head or designee, and title:</th>
<th>Nathan Checketts, Interim Executive Director</th>
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<td>Date:</td>
<td>10/21/2021</td>
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**Utah Admin. Code Ref (R no.):** R392-302  
**Filing ID:** 52333

**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

**Contact person(s):**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Phone:</th>
<th>Email:</th>
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</thead>
<tbody>
<tr>
<td>Karl Hartman</td>
<td>801-538-6191</td>
<td><a href="mailto:khartman@utah.gov">khartman@utah.gov</a></td>
</tr>
</tbody>
</table>

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

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**General Information**

2. **Rule catchline:**

   R392-302. Design, Construction and Operation of Public Pools

3. **A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

   This rule is authorized under Sections 26-1-5, 26-7-1, and 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23).

4. **A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

   No comments 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 establishes minimum standards for the design, construction, operation, and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health including risk factors contributing to injury, sickness, death, and disability. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.
control of health hazards associated with a temporary mass gathering that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

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<th>Agency Authorization Information</th>
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<tr>
<td><strong>Agency head or designee, and title:</strong> Nathan Checketts, Interim Executive Director</td>
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<tr>
<td><strong>Date:</strong> 10/21/2021</td>
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<tr>
<td><strong>Utah Admin. Code Ref (R no.):</strong> R392-400</td>
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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<tr>
<td><strong>City, state and zip:</strong> Salt Lake City, UT 84114-2102</td>
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<tr>
<td><strong>Contact person(s):</strong></td>
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</table>

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

General Information

2. **Rule catchline:** R392-400. Temporary Mass Gathering Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

   This rule is authorized under Sections 26-15-2, 26-1-5, and 26-1-30.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

   No comments 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 establishes minimum standards for the sanitation, operation, and maintenance of a temporary mass gathering and provides for the prevention and...

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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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<td><strong>Agency head or designee, and title:</strong> Nathan Checketts, Interim Executive Director</td>
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<tr>
<td><strong>Date:</strong> 10/29/2021</td>
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<tr>
<td><strong>Utah Admin. Code Ref (R no.):</strong> R392-402</td>
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<td><strong>1. Department:</strong> Health</td>
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<td><strong>Street address:</strong> 288 N 1460 W</td>
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<td><strong>City, state and zip:</strong> Salt Lake City, UT 84114-2102</td>
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<td><strong>Contact person(s):</strong></td>
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</table>

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

General Information

2. **Rule catchline:** R392-402. Manufactured Home Community Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

   This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments 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 establishes minimum standards for the sanitation, operation, and maintenance of a manufactured home community and provides for the prevention and control of health hazards associated with a manufactured home community that are likely to affect individuals dwelling therein including risk factors contributing to injury, sickness, death, and disability. Therefore, this rule should be continued.

Agency Authorization Information

| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: | 10/21/2021 |
---|---|---|---|

This rule is authorized under Sections 26-1-5, 26-7-1, and 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments 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 establishes minimum standards for the sanitation, operation, and maintenance of a temporary labor community, and provides for the prevention and control of health hazards associated with a temporary labor community that are likely to affect individuals dwelling temporarily therein including risk factors contributing to injury, sickness, death, and disability. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

Agency Authorization Information

| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: | 10/21/2021 |
---|---|---|---|

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):

<table>
<thead>
<tr>
<th>Name:</th>
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<tbody>
<tr>
<td>Karl Hartman</td>
<td>801-538-6191</td>
<td><a href="mailto:khartman@utah.gov">khartman@utah.gov</a></td>
</tr>
</tbody>
</table>

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

General Information

2. Rule catchline:

R392-501. Temporary Labor Community Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

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

2. Rule catchline:
R392-502. Public Lodging Facility Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsection 26-1-30(23).

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:
One local health department commented that "[they] are glad to have this rule in order to provide some minimum standards for public lodging." No comments received in opposition 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 sets standards for health and welfare of guests of public lodging and for the prevention of the spread of disease in or through public lodging facilities. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

Agency Authorization Information

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<thead>
<tr>
<th>Agency head or designee, and title:</th>
<th>Nathan Checketts, Interim Executive Director</th>
<th>Date:</th>
<th>10/21/2021</th>
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Contact person(s):

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<tr>
<th>Name:</th>
<th>Phone:</th>
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<tbody>
<tr>
<td>Craig Devashrayee</td>
<td>801-538-6641</td>
<td><a href="mailto:cdevashrayee@utah.gov">cdevashrayee@utah.gov</a></td>
</tr>
</tbody>
</table>

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

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General Information

2. Rule catchline:
R414-10. Physician Services

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. 42 CFR 440.50 also allows the Department to provide physician services to Medicaid members who fall within a physician's scope of practice.

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 did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department will continue this rule because it sets forth eligibility requirements, requirements for program access, and provisions for coverage. The Department recently amended this rule to update the scope of practice for physician assistants set forth in Title 58, Chapter 70a, and to make other clarifications.

Agency Authorization Information

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<tr>
<th>Agency head or designee, and title:</th>
<th>Nathan Checketts, Interim Executive Director</th>
<th>Date:</th>
<th>10/18/2021</th>
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R414-10  Filing ID: 50961

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.): R590-91  Filing ID: 51337

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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: Phone: Email:
Steve Gooch 801-957-9322 sgooch@utah.gov
Please address questions regarding information on this notice to the agency.

General Information
2. Rule catchline:
R590-91. Credit Life Insurance and Credit Accident and Health Insurance
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 31A-2-201 authorizes the commissioner to write rules to implement the provisions of Title 31A, Insurance Code. This rule implements the provisions of Title 31A, Chapter 22, Part 9, Credit Life and Accident and Health Insurance, regarding the reasonable rating, policy form, and operating standards for the transaction of credit life insurance and credit accident and health insurance.

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 of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule protects the interests of debtors and the public in this state and ensures a fair and equitable credit insurance market by establishing a system of reasonable rating, policy form, and operating standards for transaction of credit life, accident, and health insurance. Therefore, this rule should be continued.

Agency Authorization Information
Agency head or designee, and title: Steve Gooch, Public Information Officer
Date: 10/19/2021

End of the Five-Year Notices of Review and Statements of Continuation Section
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>
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<th>Effective</th>
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<tr>
<td>Agriculture and Food Plant Industry</td>
<td>53641</td>
<td>(Amendment) R68-25: Industrial Hemp Research Pilot Program for Processors</td>
<td>07/15/2021</td>
<td>10/29/2021</td>
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<tr>
<td></td>
<td>53641</td>
<td>(Change in Proposed Rule) R68-25: Industrial Hemp Research Pilot Program for Processors</td>
<td>09/01/2021</td>
<td>10/29/2021</td>
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<tr>
<td>Commerce</td>
<td>53945</td>
<td>(Amendment) R156-70a: Physician Assistant Practice Act Rule</td>
<td>10/01/2021</td>
<td>11/09/2021</td>
</tr>
<tr>
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<td>53635</td>
<td>(New Rule) R162-2h: Affiliated Title Business Rule</td>
<td>09/15/2021</td>
<td>10/26/2021</td>
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<tr>
<td>Education Administration</td>
<td>53970</td>
<td>(Amendment) R277-113: LEA Fiscal and Auditing Policies</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53971</td>
<td>(Amendment) R277-116: Audit Procedure</td>
<td>10/01/2021</td>
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<td>53972</td>
<td>(New Rule) R277-123: Process for Members of the Public to Report Violations of Statute and Board Rule</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>(New Rule) R277-312: Online Educator Licensure</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<tr>
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<td>53974</td>
<td>(New Rule) R277-315: Educator Professional Learning Procedures and USBE Credit</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53976</td>
<td>(Amendment) R277-324: Paraprofessional/Paraeducator Programs, Assignments, and Qualifications</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>(Repeal) R277-512: Online Licensure</td>
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<tr>
<td>53979</td>
<td>(Repeal)</td>
<td>R277-526: Paraeducator to Teacher Scholarship Program</td>
<td>10/01/2021</td>
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<td>53981</td>
<td>(Amendment)</td>
<td>R277-712: Competency-based Grant Programs</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53982</td>
<td>(Amendment)</td>
<td>R277-720: Reimbursement Program for Early Graduation from Competency-Based Education</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53983</td>
<td>(Repeal)</td>
<td>R277-753: LEA Reporting Requirements for Section 504 Students</td>
<td>10/01/2021</td>
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<td>53984</td>
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<td>R277-914: Career and Technical Student Organizations</td>
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<tr>
<td>53609</td>
<td>(Amendment)</td>
<td>R23-31: Executive Residence Mansion</td>
<td>07/15/2021</td>
<td>10/27/2021</td>
</tr>
<tr>
<td>53834</td>
<td>(Repeal)</td>
<td>R357-1: Rural Fast Track Program</td>
<td>09/01/2021</td>
<td>10/12/2021</td>
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<tr>
<td>53835</td>
<td>(Repeal)</td>
<td>R357-19: Business Resource Centers</td>
<td>09/01/2021</td>
<td>10/12/2021</td>
</tr>
<tr>
<td>53769</td>
<td>(Repeal)</td>
<td>R357-20: Education Computing Partnerships</td>
<td>09/01/2021</td>
<td>10/12/2021</td>
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<tr>
<td>53890</td>
<td>(Amendment)</td>
<td>R357-29: Rural County Grant Program Rule</td>
<td>09/15/2021</td>
<td>10/26/2021</td>
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<tr>
<td>53895</td>
<td>(New Rule)</td>
<td>R357-42: Redeveloping Matching Grant Rule</td>
<td>09/15/2021</td>
<td>10/26/2021</td>
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<td>53836</td>
<td>(Repeal and Reenact)</td>
<td>R414-29: Client Review/Education and Restriction Policy</td>
<td>09/15/2021</td>
<td>11/01/2021</td>
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<td>53847</td>
<td>(Amendment)</td>
<td>R434-100: Physician Visa Waivers</td>
<td>09/01/2021</td>
<td>10/13/2021</td>
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<td>53889</td>
<td>(Amendment)</td>
<td>R495-882: Termination of Parental Rights</td>
<td>09/15/2021</td>
<td>10/25/2021</td>
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<td>53851</td>
<td>(Repeal)</td>
<td>R512-1: Description of Division Services, Eligibility, and Service Access</td>
<td>09/15/2021</td>
<td>10/23/2021</td>
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<td>53908</td>
<td>(Amendment)</td>
<td>R512-11: Accommodation of Moral and Religious Beliefs and Culture</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53906</td>
<td>(Amendment)</td>
<td>R512-32: Children with Reportable Communicable Diseases</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53907</td>
<td>(Repeal)</td>
<td>R512-42: Adoption by Relatives</td>
<td>10/01/2021</td>
<td>11/08/2021</td>
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<td>53852</td>
<td>(Repeal)</td>
<td>R512-204: Child Protective Services, New Caseworker Training</td>
<td>09/15/2021</td>
<td>10/23/2021</td>
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</tbody>
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NOTICES OF RULE EFFECTIVE DATES

Substance Abuse and Mental Health, State Hospital
No. 53932 (Repeal) R525-2: Patient Rights
Published: 10/01/2021
Effective: 11/09/2021

No. 53933 (Repeal) R525-3: Medication Treatment of Patients
Published: 10/01/2021
Effective: 11/09/2021

No. 53934 (Repeal) R525-4: Visitors
Published: 10/01/2021
Effective: 11/09/2021

No. 53883 (Repeal) R525-5: Background Checks
Published: 09/15/2021
Effective: 11/09/2021

No. 53935 (Amendment) R525-6: Prohibited Items and Devices
Published: 10/01/2021
Effective: 11/09/2021

No. 53884 (Repeal) R525-7: Complaints/Suggestions/Concerns
Published: 09/15/2021
Effective: 11/09/2021

Recovery Services
No. 53888 (Amendment) R527-3: Definitions
Published: 09/15/2021
Effective: 10/25/2021

No. 53904 (Amendment) R527-34: Non-IV-A Services
Published: 10/01/2021
Effective: 11/09/2021

No. 53887 (Repeal) R527-37: Closure Criteria for Support Cases
Published: 09/15/2021
Effective: 10/25/2021

No. 53882 (Repeal) R527-253: Collection of Child Support Judgments
Published: 09/15/2021
Effective: 10/25/2021

No. 53905 (Amendment) R527-303: Automatic Payment Withdrawl
Published: 10/01/2021
Effective: 11/09/2021

Services for People with Disabilities
No. 53734 (New Rule) R539-11: Strategy Report Advisory Committee
Published: 08/01/2021
Effective: 10/22/2021

No. 53734 (Change in Proposed Rule) R539-11: Strategy Report Advisory Committee
Published: 09/15/2021
Effective: 10/22/2021

No. 53857 (Amendment) R590-70: Insurance Holding Companies
Published: 09/15/2021
Effective: 10/25/2021

No. 53844 (Repeal) R590-76: Health Maintenance Organizations and Limited Health Plans
Published: 09/01/2021
Effective: 10/12/2021

No. 53927 (Amendment) R590-85: Accident and Health Insurance and Medicare Supplement Rates
Published: 10/01/2021
Effective: 11/08/2021

No. 53928 (Amendment) R590-98: Unfair Practice in Payment of Life Insurance and Annuity Policy Values
Published: 10/01/2021
Effective: 11/08/2021

No. 53858 (Amendment) R590-103: Security Deposits
Published: 09/15/2021
Effective: 10/25/2021

No. 53911 (Amendment) R590-108: Interest Rate During Grace Period or Upon Reinstatement of Policy
Published: 10/01/2021
Effective: 11/08/2021

No. 53929 (Amendment) R590-114: Letters of Credit
Published: 10/01/2021
Effective: 11/08/2021

No. 53910 (Amendment) R590-117: Valuation of Liabilities
Published: 10/01/2021
Effective: 11/08/2021

No. 53859 (Amendment) R590-120: Surety Bond Forms
Published: 09/15/2021
Effective: 10/25/2021

No. 53909 (Amendment) R590-121: Rate Modification Plan Rule
Published: 10/01/2021
Effective: 11/08/2021

No. 53878 (Amendment) R590-124: Loss Information Rule
Published: 09/15/2021
Effective: 10/25/2021

No. 53879 (Amendment) R590-127: Rate Filing Exemptions
Published: 09/15/2021
Effective: 10/25/2021
NOTICES OF RULE EFFECTIVE DATES

No. 53880 (Amendment) R590-129: Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment
Published: 09/15/2021
Effective: 10/25/2021

Title and Escrow Commission
No. 53842 (Amendment) R592-8: Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing
Published: 09/01/2021
Effective: 10/12/2021

No. 53845 (Amendment) R592-9: Assessment for Title Insurance Recovery, Education, and Research Fund
Published: 09/01/2021
Effective: 10/12/2021

No. 53843 (Amendment) R592-10: Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers
Published: 09/01/2021
Effective: 10/12/2021

Natural Resources
Geological Survey
No. 53634 (Amendment) R638-1: Acceptance and Maintenance of Confidential Information
Published: 08/15/2021
Effective: 10/20/2021

Wildlife Resources
No. 53885 (Amendment) R657-10: Taking Cougar
Published: 09/15/2021
Effective: 10/25/2021

No. 53886 (Amendment) R657-41: Conservation and Sportsman Permits
Published: 09/15/2021
Effective: 10/25/2021

End of the Notices of Rule Effective Dates Section