

# UTAH STATE BULLETIN

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

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<b>NOTICES OF PROPOSED RULES .....</b>	<b>1</b>
AGRICULTURE AND FOOD	
Administration	
R51-5. Rural Rehabilitation Loans .....	2
Conservation Commission	
R64-1. Agriculture Resource Development Loans (ARDL) .....	6
AUDITOR	
Administration	
R123-6-3. Disbursements .....	9
COMMERCE	
Occupational and Professional Licensing	
R156-17b. Pharmacy Practice Act Rule .....	11
R156-60b. Marriage and Family Therapist Licensing Act Rule .....	27
ENVIRONMENTAL QUALITY	
Air Quality	
R307-301. Utah and Weber Counties: Oxygenated Gasoline Program as a Contingency Measure .....	32
HEALTH	
Disease Control and Prevention, Health Promotion	
R384-205. Opiate Overdose Outreach Pilot Program .....	40
Disease Control and Prevention, Epidemiology	
R386-703. Injury Reporting Rule .....	42
Health, Disease Control and Prevention, Environmental Services	
R392-300. Recreation Camp Sanitation .....	47
R392-400. Temporary Mass Gatherings Sanitation .....	52
R392-501. Temporary Labor Community Sanitation .....	58
R392-700. Indoor Tanning Bed Sanitation .....	65
Family Health and Preparedness, Licensing	
R432-152. Mental Retardation Facility .....	72
R432-153. Pediatric Respite Care Facility .....	84
R432-700. Home Health Agency Rule .....	90
HUMAN SERVICES	
Recovery Services	
R527-40. Retained Support .....	99

R527-300. Income Withholding .....	102
R527-301. Non-IV-D Income Withholding.....	104
R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases .....	106
R527-430. Administrative Notice of Lien-Levy Procedures .....	109
R527-450. Federal Tax Refund Intercept.....	111
R527-920. Mandatory Disbursement to Obligee Through Electronic Funds Transfer .....	114
INSURANCE	
Administration	
R590-155. Utah Life and Health Insurance Guaranty Association Summary Document.....	116
LABOR COMMISSION	
Administration	
R600-2. Operations.....	119
Industrial Accidents	
R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.....	120
PARDONS (BOARD OF)	
Administration	
R671-301. Personal Appearance.....	122
R671-303. Information Received, Maintained or Used by the Board .....	124
R671-304. Hearing Record .....	126
R671-305. Board Decisions and Orders.....	128
R671-310. Rescission Hearings .....	130
R671-316. Redetermination.....	132
TRANSPORTATION	
Administration	
R907-63-2. Procedure to Collect for Damage to Structures and Highways .....	135
TRANSPORTATION COMMISSION	
Administration	
R940-3. State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance .....	137
<b>NOTICES OF 120-DAY (EMERGENCY) RULES.....</b>	<b>141</b>
LABOR COMMISSION	
Occupational Safety and Health	
R614-1-4. Incorporation of Federal Standards .....	141

NATURAL RESOURCES	
Administration	
R634-4. Health Reform – Health Insurance Coverage in State Contracts – Implementation .....	144
WORKFORCE SERVICES	
Housing and Community Development	
R990-200-5. Criteria for Allocating Volume Cap .....	147
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION .....</b>	
<b>151</b>	
GOVERNMENT OPERATIONS	
Archives and Records Service	
R17-9. Electronic Participation at Meetings .....	151
Debt Collection	
R21-30 Debt Collection Through Administrative Offset .....	152
Finance	
R25-20. Indigent Defense Funds Board, Procedures for Electronic Meetings .....	152
COMMERCE	
Consumer Protection	
R152-6. Administrative Procedures Act Rule .....	153
R152-15. Business Opportunity Disclosure Act Rule .....	153
R152-20. New Motor Vehicle Warranties Act Rule .....	154
R152-22. Charitable Solicitations Act Rule .....	154
R152-23. Health Spa Services Protection Act Rule .....	155
R152-42. Uniform Debt-Management Services Act Rule .....	156
ENVIRONMENTAL QUALITY	
Air Quality	
R307-110. General Requirements: State Implementation Plan .....	156
R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment .....	157
R307-130. General Penalty Policy .....	158
R307-135. Enforcement Response Policy for Asbestos Hazard Emergency Response Act .....	158
R307-320. Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program .....	159
R307-325. Ozone Nonattainment and Maintenance Areas: General Requirements .....	159
R307-326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries .....	160
R307-327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage .....	161

R307-328. Gasoline Transfer and Storage .....	161
R307-335. Degreasing .....	162
R307-341. Ozone Nonattainment and Maintenance Areas: Cutback Asphalt .....	163
R307-343. Wood Furniture Manufacturing Operations .....	163
HEALTH	
Disease Control and Prevention, Environmental Services	
R392-510. Utah Indoor Clean Air Act .....	164
Family Health and Preparedness, Emergency Medical Services	
R426-5. Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards .....	164
HUMAN SERVICES	
Child and Family Services	
R512-311. Out-of-Home Services .....	165
Public Guardian (Office of)	
R549-1. Eligibility and Services Priority .....	166
INSURANCE	
Administration	
R590-176. Health Benefit Plan Enrollment .....	166
R590-181. Yankee Bond Rule .....	167
R590-182. Risk Based Capital Instructions .....	167
LABOR COMMISSION	
Administration	
R600-2. Operations .....	168
Adjudication	
R602-1. Office Record .....	169
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims .....	169
<b>NOTICES OF FIVE-YEAR EXPIRATIONS .....</b>	<b>171</b>
NATURAL RESOURCES	
Administration	
R634-2. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation .....	171
SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY (UTAH)	
Administration	
R856-1. USTAR Technology Acceleration Program Grants .....	172
R856-2. USTAR University-Industry Partnership Program Grants .....	172
R856-3. USTAR University Technology Acceleration Grants .....	172

**NOTICES OF RULE EFFECTIVE DATES .....173**





## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 16, 2021, 12:00 a.m., and December 01, 2021, 11:59 p.m. are included in this, the December 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 January 14, 2022. 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 April 14, 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.

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The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R51-5	Filing ID 54137

#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Administration	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Jim Bowcutt	801-536-4336	jdbowcutt@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule or section catchline:</b>
R51-5. Rural Rehabilitation Loans
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Changes are needed to make this rule consistent with changes to the Agricultural Advisory Board that were made in H.B. 163, Agricultural Advisory Board Amendments, passed during the 2021 General Session.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The rule has been updated to change "Executive Loan Committee" to "Executive Committee" both in the definition Section R51-5-2, as well as throughout this rule. Per the requirements of H.B. 163 (2021), the newly created Executive Committee will assume the responsibilities previously held by the Executive Loan Committee. Additional changes have been made to this rule to make the text more consistent with the requirements of the Utah Administrative Rulewriting Manual.

#### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There should be no impact to the state budget. The Rural Rehabilitation Loan program will continue to operate under their existing budget.
<b>B) Local governments:</b>
There should be no impact on local governments because they do not administer or participate in the rural rehabilitation loan program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There should be no impact on small businesses because the requirements of the program or availability of funds will not change. This rule change just impacts which committee under the Agricultural Advisory Board will be responsible for approval of loans.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There should be no impact on non-small businesses because the requirements of the program or availability of funds will not change. This rule change just impacts which committee under the Agricultural Advisory Board will be responsible for approval of loans.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There should be no impact on other persons because the requirements of the program or availability of funds will not change. This rule change just impacts which committee under the Agricultural Advisory Board will be responsible for approval of loans.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
Compliance costs for affected persons will not change because any fees charged by the Utah Department of Agriculture and Food associated with the program will remain in place.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):
This rule change will not have a fiscal impact on businesses in Utah. Craig W. Butters, Commissioner

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

**Regulatory Impact Table**

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

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

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

**Citation Information**

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

Section 4-19-101

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	11/30/2021
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**R51. Agriculture and Food, Administration.**

**R51-5. Rural Rehabilitation Loans.**

**R51-5-1. Authority.**

Pursuant to Section 4-19-101 and Subsection 4-2-103(1)(i), this rule establishes the general operating practices by which the Rural Rehabilitation Loan program shall function.

**R51-5-2. Definitions.**

(1) ~~["AGRICULTURAL ADVISORY BOARD:"]~~ "Agricultural Advisory Board" means ~~[A]~~a twenty-one-member board appointed by the Commissioner of Agriculture to advise the Commissioner regarding~~[z]~~ the planning, implementation, and administration of the Department of Agriculture and Food's programs as authorized by Section 4-2-108.

(2) ~~["BOARD:"]~~ "Board" means ~~[F]~~the Agricultural Advisory Board.

(3) ~~["BORROWER/APPLICANT:"]~~ "Borrower" or "Applicant" means ~~[A]~~a person applying to or borrowing Rural Rehabilitation federal or state funds.

(4) ~~["COMMISSIONER:"]~~ "Commissioner" means ~~[F]~~the Commissioner of the Utah Department of Agriculture and Food, who is responsible for the conduct and administration of the Rural Rehabilitation Loan Program within the ~~[S]~~state in accordance with the Use Agreement entered into in January 1975.

(5) "Department" means the Utah Department of Agriculture and Food.

(~~[5]~~6) "Executive Committee" means a committee consisting of members of the Board that is organized under Subsection 4-2-108(9) and is tasked with approval of Rural Rehabilitation Loans. Pursuant to Subsection 4-19-104(5), the Executive Committee may create a Subcommittee from Board membership to approve a loan or renewal.~~["EXECUTIVE LOAN COMMITTEE: A committee consisting of the Board's chair, vice chair, and two other members selected for the Board who approve loans. The Executive Loan Committee shall be nominated at the beginning of each calendar year and shall serve a one year term."]~~

**R51-5-3. Rural Rehabilitation Loan Program Operation**~~Objectives~~.

(1) The program is available to any entity allowed under the January 1975 ~~[U]~~use ~~[A]~~agreement~~[z]~~ between the department and the United States Farm Home Administration or state or federal law, including individual farmers and ranchers or agricultural

## NOTICES OF PROPOSED RULES

cooperatives, corporations, or other entities that directly or indirectly provide assistance to ~~[such]~~ farmers or members of their families.

(2) ~~Borrowers~~~~The Rural Rehabilitation Loan program~~ may use funds for any purpose allowed under the January 1975 ~~[U]se [A]greement~~, including for one or more of the following ~~[F]Rural [F]Rehabilitation~~ purposes:

- (a) ~~[L]loans~~, such as:
  - (i) ~~[R]real [E]state [L]loans~~;
  - (ii) ~~[F]farm [O]perating [L]loans~~;
  - (iii) ~~[Y]youth [L]loans~~;
  - (iv) ~~[E]education [L]loans~~; or
- (v) ~~loans for [I]rrigation and [W]ater [C]onservation~~

~~[P]rojects~~;

- (b) ~~[G]grants, such as~~:
  - (i) ~~[Y]youth and [E]education [G]grants~~;
  - (c) ~~[R]eserve [F]unds~~; and
  - (d) ~~[O]ther [R]ural [R]ehabilitation [P]urposes~~.

(3) ~~Borrowers may use [L]loans [shall be] for the purchase of land[s] within the borders of [the State of] Utah, and any collateral or security for a loan must be located within [the State of] Utah.~~

(4) ~~[Such]The department may use a portion of [the cost of administration and protection of assets as necessary]program funds [may be also used by the state]for:~~

- (a) ~~[C]osts of [A]dministration~~;
- (b) ~~[P]rotection of the [A]ssets~~; and
- (c) ~~[T]emporary investments, annual reports, implementing agreements, and other allowed uses under Title 4, Chapter 19, Rural Rehabilitation.~~

(5) The ~~[D]epartment~~ may not make a loan authorized under ~~[this chapter]Title 4, Chapter 19, Rural Rehabilitation~~, for a period to exceed 10-years~~[but the loan is renewable]~~. ~~Loans are renewable. [Total borrowings by any one entity shall be limited to no more than \$350,000 with each application.]A limitation on total borrowings by any one entity shall be set in policy approved by the Executive Committee.~~

(6) ~~[For the purposes of protecting]To protect~~ its interest in a defaulting loan, the Board may use either appropriated or repayment monies to purchase or otherwise obtain property in which the Board has acquired a security interest by any mortgage, trust deed, pledge, assignment, judgment, or other means at any execution, bankruptcy, or foreclosure sale.

(7) The Board may ~~[also]operate or lease, if necessary to protect [is]an investment, any property in which it has an interest, or sell or otherwise dispose of such property to recover loaned funds.~~

(8) ~~The department, through the Executive Committee or Board and in conjunction with the Commissioner, may adopt additional policies and procedures as necessary to carry out the purposes of the Rural Rehabilitation Loan program. These policies and procedures may be in addition to those outlined in this rule.~~

### R51-5-4. Loan Application.

(1) ~~The department shall accept and process [L]loan requests [shall be accepted and processed]from eligible [A]pplicants regardless of race, age, sex, creed, color, religion, national origin, or on any other basis prohibited by law.~~

(2) ~~An applicant shall request a loan in writing[A request for a loan must be in writing as required] on the forms provided by the [D]epartment.~~

(3) The Executive ~~[Loan]Committee [and Board]~~requires a minimum of 90 days to process, approve, and close a loan.

(4) ~~An applicant may request a loan[A request for a loan may be filed] at any time during the program year.~~

(5) Approval of a loan shall be subject to availability of funds. ~~[The]Department~~ loan staff shall impartially consider each loan application on the basis of program objectives and priorities set in place and approved by the Executive ~~[Loan]Committee and Board.~~

(6) ~~[Use of loan money in conjunction with federal funds is encouraged.]Applicants [should]are encouraged to apply for available federal funds, such as from the [U]nited States Department of Agriculture Farm Service Agency[)], or other cost-share assistance.~~

~~[The Department, through the Executive Loan Committee and/or Board and in conjunction with the Commissioner, may adopt additional policies and procedures as necessary to carry out the purposes of the Rural Rehabilitation Loan program. These policies and procedures may be in addition to those outlined in this Rule.]~~

### R51-5-5. Application Procedure.

(1) Any person or group of persons ~~[desiring]who desires~~ to participate in the Rural Rehabilitation Loan program ~~[must]shall~~ apply ~~[through]to~~ the ~~[Utah Department of Agriculture and Food]department~~ through the staff of the ~~[A]griculture [L]loan~~ department.

(2) ~~Any person who contacts the department to express interest in the program shall be given an applicant information page that lists the information required in the application.~~

(3) ~~The applicant shall include the required information in a one page application letter, including any necessary personal information.~~

~~[The one page application letter must contain all information needed as instructed on the Application Information page that shall be sent to the prospective Applicant upon inquiry to the loan program. To be considered, the application must contain all appropriate information as instructed, be fully completed, and must provide all requested personal information.]~~

~~(3)4 The applicant shall send the completed application[The completed application shall be sent] directly to the [A]griculture [L]loan department either by email or regular mail.~~

(5) ~~[Upon receipt,]If necessary,~~ loan staff shall contact the ~~[A]pplicant and provide further information [to the Applicant]about the policies and procedures [to]that shall be followed in order for the loan application to be approved [obtain approval]by the Board. This conversation and[or] any other actions by the loan staff does not guarantee loan approval.~~

### R51-5-6. Loan Review.

(1) ~~Loan staff shall review and discuss [T]he application and required documentation [shall be reviewed by loan staff and discussed]with the [A]pplicant[es] or the[re] applicants representative. Loan staff shall [proceed with]shall conduct a policy compliance review, credit analysis, and underwriting [prior to]before presenting a written loan proposal to the Executive [Loan]Committee for approval.~~

(2) ~~The Executive Committee shall make [D]ecisions concerning the use of loan program funds[shall be the decision of the Agricultural Advisory Board by], and shall consider the recommendation of the Commissioner and the [D]epartment loan staff.~~

(3) The Board shall ensure, to the best of its ability, that available ~~[F]Rural [F]Rehabilitation [L]Loan funds [can be borrowed]are made available~~ in accordance with this rule and state and federal laws. If there are insufficient funds to fund ~~[an]each~~ loan

application[s], funds shall be distributed based on the date the complete application is received, in sequential order.

(4) ~~[A]The Executive Committee shall approve loans by majority vote[shall be approved by a majority of the Executive Loan Committee and ratified by the Agricultural Advisory Board].~~

(5) ~~[A]The Executive Committee shall report approved loans [credit approved on this basis shall be reported]to the Board[for ratification at the next scheduled Board meeting].~~

#### R51-5-7. Loan Closing.

(1) ~~[Upon approval by the Executive Loan Committee and ratification by the Board, t]The Commissioner shall sign loans that have been approved by the Executive Committee and make the final obligation of funds by signing the Rural Rehabilitation Obligation to Purchase form.~~

(2) Loan staff shall prepare loan documents and an instruction letter for the title company closing; including a signed ~~[W]warrant [R]request~~ to disburse funds.

(3) The ~~[B]borrower~~ may proceed with the closing at the title company.

(4) Neither the state, the ~~[D]department~~, nor the Board have any obligation to disburse funds ~~[prior to]before~~ the completion of the procedures described in Rule R51-5~~[above described procedures]~~.

(5) The ~~[Applicant]borrower~~ shall be required to cover any costs incurred for loan closing including escrow fees, title insurance, recording fees, and appraisal when necessary.

#### R51-5-8. Collections.

(1) Collection Policy. The department shall follow the following procedures ~~[should be followed]~~ on delinquent loans:

(a) 30 Days Past Due: If ~~[payment has not been received]the department does not receive payment~~ within 30 days after the due date, a delinquent notice reflecting the amount due including penalty shall be sent to the ~~[B]borrower~~.

(b) 60 Days Past Due: If ~~[payment has not been received]the department does not receive payment~~ within 60 days after the due date, a second delinquent notice shall be sent ~~[out]to the borrower. Loan staff shall also make p[P]ersonal contact [shall also be made by loan staff]~~ with the ~~[B]borrower~~ during this time period to try to collect the payment.

(c) 90 Days Past Due: If ~~[payment has not been received]the department does not receive payment~~ within 90 days after the due date, a third delinquent notice shall be sent ~~[out]to the borrower. This notice may also advise the [B]borrower that payment [must]shall be made or other satisfactory arrangements made with loan staff within 30 days or the account shall be assigned to the Attorney General's Office for appropriate action. [Attempts to make personal contact by loan staff shall be made]Loan staff shall attempt to make personal contact during this period [of time]to try to collect the payment or make acceptable arrangements with the [B]borrower.~~

(d) 120 to 180 Days Past Due: Loan staff shall work with the ~~[B]borrower~~ to make satisfactory arrangements for payment of past due amounts. This may include:

(i) modifying of the terms of the original contract to meet the ~~[B]borrower's~~ ability to perform on the obligation~~[s]~~;

(ii) taking additional or substitute collateral if the lender is deemed insecure~~[s]~~; or

(iii) any other appropriate actions to provide service for the ~~[B]borrower~~ and protect against loss~~[should be done]~~.

(e) If it appears that the ~~[B]borrower~~ shall be unable to pay the loan, refuses to communicate or cooperate with the ~~[D]department~~ or loan staff, or fails to cure the delinquency, the account shall be assigned to the Attorney General's ~~[O]Office~~ for collection and foreclosure proceedings.

(f) These actions are at the discretion of the loan staff in consultation with the Commissioner or ~~[his/her]the Commissioner's~~ designee and the Attorney General's Office.

(2) Notwithstanding the ~~[above time guidelines]~~ procedures set in Subsection R51-5-8(1), at any time, the loan staff, with approval from the Commissioner ~~[his/her]~~ or the Commissioner's designee, may consult with the Attorney General's Office on behalf of the ~~[D]department~~ to protect the state's interest in any pledged security or collateral on a loan or to protect its interest in any property, real or otherwise.

(3) Notwithstanding the ~~[above time guidelines]~~ procedures set in Subsection R51-5-8(1), the state or the ~~[D]department~~ may, at any time, pursue any legal or equitable remedy allowed under state or federal law to protect its interest in any pledged security or collateral on a loan or to protect its interest in any property, real or otherwise.

**KEY: Rural Rehabilitation Loans, loans**

**Date of Last Change: ~~May 2, 2018~~2022**

**Authorizing, and Implemented or Interpreted Law: 4-19-103; 4-2-103(i); 4-19-102**

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R64-1

**Filing ID**  
54136

#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Conservation Commission	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Jim Bowcutt	801-536-4336	jdbowcutt@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

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

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

R64-1. Agriculture Resource Development Loans (ARDL)

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

Additional language is needed in this rule to address the Emergency Disaster Relief loan program that has been created under the Agriculture Resource Development Loan (ARDL) program and is being used to provide loans to agriculture producers to address losses related to drought and other natural disasters. This rule change will make permanent changes that were filed as emergency changes in September 2021.

(EDITOR'S NOTE: The 120-day (emergency) rule was effective on 09/13/2021 and is under ID No. 53936 in the October 1, 2021, Bulletin.)

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

A new Subsection R64-1-3(8) has been added to Section R64-1-3 allowing for the issuance of disaster related loans under the ARDL program that would not be subject to the same requirements as typical ARDL loans. This is authorized under Subsection 4-18-106(3)(g) that allows the Utah Conservation Commission to make loans or grants out of the ARDL fund for a "project or program to improve water quality or address other issues." Additional changes to this rule are also made to make the text more consistent with the requirements of the Utah Administrative Rulewriting Manual and current Department of Agriculture and Food (Department) practices.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The Department has been granted funding of \$5,000,000 from the state's Industrial Assistance Account to provide loans under this program with an application period that lasts through 04/30/2022. \$250,000 of that initial amount was set aside to cover administrative expenses. To date, approximately \$300,000 of the remaining funds have been disbursed. Of the remaining approximately \$4,450,000 undisbursed funds, the Department estimates that 80% (\$3,560,000) will benefit other persons including individuals or partnerships and the remaining \$890,000 will benefit small businesses. The funds may be expended through the current loan period and, per the application requirements, loan funds must be used by the end of Fiscal Year 2022, as is reflected in the regulatory impact table. There is a chance that all funds will not be used, however, based on the needs of producers. There is also a chance that the program will be extended based on drought or other emergency conditions. Loans should be

paid back within seven years under the program, however, that is not reflected in the three-year table.

**B) Local governments:**

There should be no cost or savings to local governments because they do not administer or participate in the emergency disaster relief loan program.

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

Current program loan funds will benefit agricultural producers who have been impacted by drought conditions. The Department estimates that 20% of currently undisbursed funds or approximately \$890,000 will benefit small businesses in the state.

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

Because of program requirements, the Department does not anticipate that non-small businesses will benefit from this 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**):

The Department estimates that 80% of the funds under this program will be disbursed to other persons, including mainly individuals and partnerships. This would be a total of approximately \$3,560,000 of remaining funds under the current loan period.

**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 or loan application costs required to participate in this 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 codifies an emergency disaster relief loan program that will have a positive fiscal impact on agricultural businesses by allowing them access to low interest loans if their business is impacted by drought or other emergency conditions. Craig W. Buttars, Commissioner

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$4,450,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$4,450,000</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$890,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$3,560,000	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$4,450,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 4-18-105	Section 4-18-106	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	01/14/2022

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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**

<b>Agency head or designee, and title:</b>	Craig W. Butters, Commissioner	<b>Date:</b>	11/17/2021
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**R64. Agriculture and Food, Conservation Commission.****R64-1. Agriculture Resource Development Loans (ARDL).****R64-1-1. Authority and Purpose.**

Pursuant to Section 4-18-105, this rule establishes general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function.

**R64-1-2. Definitions.**

~~(1) "Commission" means the Utah Conservation Commission created by Section 4-18-4, which directs and implements the Agriculture Resource Development Loan program throughout the State of Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.~~

~~(2) "ZEC" means a zone executive committee representing several conservation districts in a geographic area consisting of one member from each of the conservation districts in that zone to coordinate ARDL activities.~~

~~(3) "CD Board" means a conservation district board consisting of five elected supervisors within each conservation district created by Section 4-18-105, to coordinate ARDL activities at the district level.~~

~~(4) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of the ARDL program employed by the Department of Agriculture and Food.~~

~~(5) "Technical Assistance" or "Technical Assistance Agency" means such individuals or group of individuals, including administrative services, who may be requested by an applicant client to provide specialized input for proposed projects.~~

~~(6) "Executive Committee" means a committee, made up of the commission chair and at least two other members selected from and approved by the commission, who approve applications for presentation to the commission.~~

~~(7) "Application" means a project proposal which is prepared by an individual seeking ARDL funds through the process established by the commission and in accordance with Section 4-18-105.~~

~~(8) "Resource Improvement and Management Plan" means a plan providing a schedule of operations, implementation and cost estimates, and other pertinent information prepared by a technical assistant, or technical assistance agency, which has been approved by the commission.~~ (1) "Application" means a project proposal which is prepared by an individual seeking ARDL funds through the process established by the commission and in accordance with Section 4-18-105.

(2) "ARLD Program Coordinator or Loan Administrator" means the staff administrator of the ARDL program employed by the Department of Agriculture and Food.

(3) "CD Board" means a conservation district board consisting of five appointed supervisors within each conservation district created by Section 4-18-105, to coordinate ARDL activities at the district level.

(4) "Commission" or "UCC" means the Utah Conservation Commission created by Section 4-18-104, that directs and implements the ARDL program throughout Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.

(5) "Resource Improvement and Management Plan" means a plan providing a schedule of operations, implementation and cost estimates, and other pertinent information prepared by a technical assistant, or technical assistance agency, that has been approved by a conservation district.

(6) "Technical Assistance" or "Technical Assistance Agency" means individuals or group of individuals, including administrative services individuals, who may be requested by an applicant client to provide specialized input for proposed projects.

(7) "UCC Subcommittee" means a committee, made up of the commission chair and at least two other members selected from and approved by the commission, who approve loans for ratification by the commission.

#### **R64-1-3. Administration of Agriculture Resource Development Fund.**

[(1) The objectives of the ARDL program are to conserve agricultural resources of the state, increase agriculture yields and efficiency for croplands, orchards, pastures, range and livestock, maintain and improve water quality, conserve and improve wildlife habitat, prevent flooding, conserve or develop on farm energy resources, mitigate damages to agriculture as a result of flooding, drought, or other natural disasters, and provide and maintain protection of a crop or animal resource. The commission shall annually allocate funds appropriated for projects that further these objectives.](1) The commission shall annually allocate funds appropriated for projects that further the objectives of the ARDL program, including:

- (a) conserve agricultural resources of the state;
- (b) increase agriculture yields and efficiency for croplands, orchards, pastures, range, and livestock;
- (c) maintain and improve water quality;
- (d) conserve and improve wildlife habitat;
- (e) prevent flooding, drought, or other natural disasters; and
- (f) provide and maintain protection of a crop or animal resource.

[(2) Applicant clients shall submit finalized project proposals to the loan administrator through the conservation districts for review. Applications shall be reviewed for funding by the executive committee if they exceed loan limits established by policy. Applicant clients shall comply with district, zone and commission application procedures, which are available at the district level. Applicant clients shall be investigated for credit and security as may be required by the commission including repayment capability, past and current financial holdings, fiscal obligations, and debt history. When requests are expected to exceed available funds, projects shall be rated and prioritized according to levels of quality of improvement(s) sought. Rating and approval information from ZEC committees and CD boards shall be duly considered.]

(2) An applicant shall:

(a) submit finalized project proposals to the loan administrator through the conservation districts for review;

(b) comply with district, zone, and commission application procedures that are available at the district level; and

(c) be subject to credit analysis and collateral valuation as required by the commission, including repayment capability, past and current financial holdings, fiscal obligations, and debt history.

(3) The UCC subcommittee shall:

(a) review applications for funding if the application exceeds loan limits established by commission policy;

(b) rate and prioritized applications, when requests may exceed available funds, according to:

(i) the quality of improvement, projects; and

(ii) the improvements sought by the commission; and

(c) consider rating and approval information from CD boards.

[(3)4] The commission will award [L]loan contracts [will be awarded] upon receipt of executed documents, generally consisting of promissory notes and other documents that are agreed to and signed by the borrower to perfect liens on required security.

[(4)5] The commission may charge an applicant a loan or technical assistance fee [When]if proposed projects include technical issues that are sufficiently complex[. loan and technical assistance fees may be charged to clients]. The commission may require projects be supervised by designated personnel.[Some projects may require supervision by commission designated personnel.]

[(5)6] Contracts with applicants [clients]shall be based on repayment ability or defined collateral. Contracts shall include schedules for loan repayment according to the agreed upon interest rates and related fiscal conditions. The loan administrator may acquire appraisals and estimates of collateral values[.] and is authorized to obtain security or collateral [in order to meet the provisions of]to satisfy the contract until agreed upon amounts have been collected.

[(6)7] Loan funded [P]projects [for which funds are loaned]shall be inspected and certified by commission designated personnel for compliance with contractual provisions.

[(7)8] Under direction of the commission, the loan administrator shall:

(a) manage the program[.];

(b) interpret guidelines[.];

(c) administer record-keeping operations[.];

(d) research financial collateral security information[.];

(e) process and service contracts associated with program functions[.];

(f) recommend loan approvals to the commission[.];

(g) analyze resource improvement and management plans[.]; and

(h) administer loan servicing[.] and collection activities.

(9) The commission may provide ARDL loan funds to agriculture producers to provide emergency disaster relief based on unusual or extraordinary circumstances such as flood, drought, or other natural disasters if:

(a) an emergency or natural disaster that has been declared within the prior six months by an authorized federal, state, or county entity, including the Utah governor's office;

(b) the parameters of the emergency loan program are set forth in policies and procedures adopted by the commission;

(c) the loans are approved by the commission or a subcommittee of the commission; and



(d) the objectives of the loan program are consistent with those set forth in state law.

(9) The commission may exempt emergency loans from the requirements of ARDL loans set forth in Section R64-1-3.

(10) Emergency loan funds may not be used for projects that would normally be approved under the ARDL program.

**KEY: loans**

**Date of Last Change:** ~~October 8, 2014~~ **2022**

**Notice of Continuation:** July 23, 2019

**Authorizing, and Implemented or Interpreted Law:** 4-18-105

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R123-6-3</b>	<b>Filing ID</b>	<b>54112</b>
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### Agency Information

<b>1. Department:</b>	Auditor	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	E310	
<b>Building:</b>	Utah State Capitol Complex, East Building	
<b>Street address:</b>	450 N State Street	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mandy Teerlink	801-538-1363	mteerlink@utah.gov
Seth Oveson	435-572-0440	soveson@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R123-6-3. Disbursements
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
H.B. 19 passed in the 2021 General Session altered population limits for county classes. This legislative change would have negatively impacted several small counties that currently receive assistance via the multi-county assessing and collecting program. As such, modifying this rule was deemed necessary to reduce the potentially significant loss to funding assistance some counties might have experienced. The intent of this program is to assist counties, particularly small counties who have above average assessing and collecting property tax rates, have sufficient funding to comply with

property valuation requirements in Utah's Constitution and statute.

During calendar year 2020, the following 13 counties received assistance:

6th class: Daggett, Piute, Rich, and Wayne

5th class: Emery, Garfield, Juab, Kane, and Morgan

4th class: Carbon, Duchesne, Sanpete, and Sevier

This assistance program only applies to certain 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):

Modified distribution formula to guarantee minimum funding to qualifying 6th counties, while also limiting possible funding reductions for qualifying 4th and 5th class counties who currently receive assistance via this program due to recent legislative changes.

### Fiscal Information

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

#### A) State budget:

No fiscal impact. No state funds are used by this program.

#### B) Local governments:

Only counties are involved in this program. Most counties will see little to no impact. 16 counties have not received assistance from this program. The 13 counties who received assistance during 2020, would generally see modest changes, with a particular focus on limiting financial loss (based on an analysis had this proposed rule been in place prior to the most recent disbursement). The revenue generated from the multi-county assessing and collecting levy imposed by all counties is distributed to the limited numbers of small counties who qualify to receive assistance. Revenues equal disbursements, resulting in an aggregate \$0 net fiscal impact. No other local governments are involved in this program.

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

No fiscal impact. This change has no impact on the associated statutorily-imposed tax levy.

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

No fiscal impact. This change has no impact on the associated statutorily-imposed tax levy.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

No fiscal impact. This change has no impact on the associated statutorily-imposed tax levy.

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

No additional cost or savings. This change alters how the Office of the State Auditor computes program assistance and can be handled within the office's current budget.

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

No fiscal impact. This change has no impact on the associated statutorily-imposed tax levy. John Dougall, Auditor

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

**Regulatory Impact Table**

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

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

The state Auditor, John Dougall, has reviewed the fiscal analysis.

**Citation Information**

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

Section 59-2-1603

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Seth Oveson, Local Government Manager	<b>Date:</b>	11/30/2021
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**R123. Auditor, Administration.**

**R123-6. Allocation of Money in the Property Tax Valuation Agency Fund.**

**R123-6-3. Disbursements.**

1. Subject to [s]Subsection (2), the disbursement of monies held in the fund shall be determined based on the following:

a. ~~Fourth, fifth, or sixth~~ class counties whose respective combined levy exceeds the mean of the combined levies of all counties shall receive an amount from the fund equal to ~~50%~~ 80% of the amount calculated when multiplying the county's Proposed Tax Rate Value ~~[-C]~~, as calculated by Utah State Tax Commission ~~[D]~~, by the portion of their combined rate that exceeds the mean rate; and

b. Fifth class counties whose respective combined levy exceeds the mean of the combined levies of all counties shall receive an amount from the fund equal to 50% of the amount calculated when multiplying the county's Proposed Tax Rate Value, as calculated by Utah State Tax Commission, by the portion of their combined rate that exceeds the mean rate; and

c. Fourth class counties whose respective combined levy exceeds the mean of the combined levies of all counties shall receive an amount from the fund equal to 20% of the amount calculated when multiplying the county's Proposed Tax Rate Value, as calculated by Utah

State Tax Commission, by the portion of their combined rate that exceeds the mean rate but not to exceed 0.000100.

[b.]d. a sixth class county shall not receive less than [\$30,000]\$20,750 annually from the fund.

2. If available monies held in the fund are not sufficient to cover amounts calculated in [s]Subsection (1); ~~the disbursement shall be reduced on a pro-rata basis.~~

a. Full distributions shall be made to sixth class counties; and

b. Distributions to fourth and fifth class counties shall be reduced on a pro-rata basis based on monies available after the distributions in Subsection (2)(a).

c. Notwithstanding Subsection (2)(b), fourth and fifth class counties who have received previous distributions shall receive distributions which minimize reductions compared to previous year distributions.

3. If available monies held in the fund exceed amounts calculated in Subsection (1), distributions shall be increased on a pro-rata basis.

[3-]4. The Office shall authorize these disbursements on an annual basis.

**KEY:** counties, property tax

**Date of Last Change:** 2022[April 8, 2015]

**Notice of Continuation:** October 28, 2019

**Authorizing, and Implemented or Interpreted Law:** 59-2-1603

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R156-17b</b>	<b>Filing ID</b>
		<b>54139</b>

#### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

#### General Information

##### 2. Rule or section catchline:

R156-17b. Pharmacy Practice Act Rule

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

This filing updates this rule to implement S.B. 177 and H. B 178 passed during the 2021 General Session, which amended the Pharmacy Practice Act provisions governing administration of injectables by pharmacists and permits a pharmacist to prescribe certain prescription drugs and devices. This filing also amends this rule in accordance with Executive Order No. 2021-12 to update and clarify this rule to facilitate compliance and enforcement, in particular with respect to recommendations by the Board of Pharmacy and the Division of Occupational and Professional Licensing (Division) regarding certain definitions and the scopes of practice for a pharmacist, pharmacy intern, and pharmacy technician, and to make changes consistent with the Utah Administrative Rulewriting Manual.

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

The amendments to Section R156-17b-102 add definitions for "consulting pharmacist," "designated representative," and "responsible individual," and clarify that compounding as defined in Section 58-17b-102(18) does not include adding flavoring agents to conventionally manufactured and commercially available liquid medication if the flavoring agents are therapeutically inert and do not exceed five percent of a preparation's total volume.

The amendments to Sections R156-17b-601 and R156-17b-612 will permit a pharmacy technician or pharmacy intern to transfer a legend prescription and permit dispensing of emergency prescriptions.

The amendment to Section R156-17b-603 will require a consulting pharmacist, PIC, RDPIC, or DMPIC to complete a self-audit after certain changes, and prior to the end of a renewal cycle.

The amendment to Section R156-17b-614a clarifies that the pharmacy department shall be equipped with a lock where drugs are stored.

The amendments to Section R156-17b-621a deletes the continuing education requirement for pharmacists engaging in the administration of long-acting injectable drugs.

The addition of Section R156-17b-627 defines operating standards for a pharmacist prescribing prescription drugs or devices. The Department of Health may address drugs or devices for prescribing of public health concerns and make recommendations to guidance documents.

In accordance with Executive Order No. 2021-12, the remaining amendments make formatting changes throughout to update and clarify this rule to facilitate compliance and enforcement and make changes

consistent with the Utah Administrative Rulewriting Manual.

A rule hearing will be held electronically before the Division via Google Meet. Join with Google Meet: [meet.google.com/aoa-iezt-ufs](https://meet.google.com/aoa-iezt-ufs); or join by phone: (US) +1 513-818-0954 (PIN: 738852788)

## Fiscal Information

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

#### A) State budget:

None of these proposed changes are expected to impact state government revenues or expenditures because the changes merely update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12, and will not affect existing state government procedures.

#### B) Local governments:

The Division estimates that these proposed amendments will have no impact on local governments because the changes merely update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12.

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

These amendments are not expected to impact small businesses' revenues or expenditures. These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12.

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

These amendments are not expected to impact non-small businesses' revenues or expenditures. These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12.

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

These amendments are not expected to impact any person. These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12.

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

There are no compliance costs expected for affected persons. These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make nonsubstantive changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 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 proposes amendments to the Pharmacy Practice Act Rule. This filing updates the rule to implement S.B. 177 and H. B. 178 (2021). The Division has updated this rule to conform to Executive Order No. 2021-1 with the Board of Pharmacy's review and approval. Further, in compliance with Executive Order No. 2021-12 issued by Governor Cox on 05/06/2021, this filing makes nonsubstantive formatting changes to comport to the Utah Administrative Rulewriting Manual.

#### Small Businesses (less than 50 employees):

These amendments are not expected to impact small businesses' revenues or expenditures. These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule in accordance with Executive Order No. 2021-12. Further, no fiscal impact is expected for small businesses beyond the fiscal notes for S.B. 177 and H.B. 178 (2021) as the costs are either inestimable or there is no fiscal impact.

#### Regulatory Impact to Non-Small Businesses (50 or more employees):

These amendments are based on extensive collaboration with the Board of Pharmacy to update this rule to establish operating standards and practices in the profession making nonsubstantive changes for clarity in accordance with Executive Order No. 2021-12. There is 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.)

**Regulatory Impact Table**

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

**B) 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:**

Section 58-17b-101	Subsection 58-17b-601(1)	Section 58-37-1
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**Incorporations by Reference Information**

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

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Guidance for Pre-Exposure and Post-Exposure Prophylaxis of HIV
<b>Publisher</b>	Utah State Board of Pharmacy, Division of Occupational and Professional Licensing
<b>Date Issued</b>	September 28, 2021

**B) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Uah Guidance for Self-Administered Hormonal Contraceptives
<b>Publisher</b>	Utah State Board of Pharmacy, Division of Occupational and Professional Licensing
<b>Date Issued</b>	September 28, 2021

**C) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Third Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Guidance for Tobacco Cessation Products
<b>Publisher</b>	Utah State Board of Pharmacy, Division of Occupational and Professional Licensing
<b>Date Issued</b>	September 28, 2021

**D) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Fourth Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Guidance for Naloxone
<b>Publisher</b>	Utah State Board of Pharmacy, Division of Occupational and Professional Licensing
<b>Date Issued</b>	September 28, 2021

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>			01/14/2022
<b>B) A public hearing (optional) will be held:</b>			
<b>On:</b>	<b>At:</b>	<b>At:</b>	
12/20/2021	9:00 AM	Rule hearing will be conducted before the Division electronically only via Google Meet (see information in Box 4 above)	

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	11/18/2021
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**R156. Commerce, Occupational and Professional Licensing.  
R156-17b. Pharmacy Practice Act Rule.**

**R156-17b-102. Definitions.**

In addition to the definitions ~~regarding pharmacy practice~~ in Title 58, Chapter ~~[s]~~ 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter ~~[and]~~ 17b, Pharmacy Practice Act, the following rule definitions supplement the statutory definitions:

- (1) "Accredited by ASHP" means a program that:
  - (a) was accredited by the ASHP on the day the applicant for licensure completed the program; or
  - (b) was in ASHP candidate status on the day the applicant for licensure completed the program.
- (2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.
- (3) "Analytical laboratory":
  - (a) means a facility in possession of prescription drugs for ~~the purpose of~~ analysis; and
  - (b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis, if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(4) "Area of need" as used in Subsection 58-17b-612(1)(b)(i) means:

(a) a remote-rural hospital, as defined in Section 26-21-13.6;

(b) a county of the fourth, fifth, or sixth class, as classified in Section 17-50-501; or

(c) any area where a demonstration of need is approved by the Division in collaboration with the Board, based on any factors affecting the access of persons in that area to pharmacy resources.

(5) "ASHP" means the American Society of Health System Pharmacists.

(6) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist, as defined in Section 1504 of the Internal Revenue Code, if the pharmaceutical wholesaler:

(a) has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and

(b) is listed on the manufacturer's current list of authorized distributors of record.

(7) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the pharmacy's operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(8) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies with the same common ownership and control.

(9) "Clinic" as used in Subsection 58-17b-625(3)(b) means a [e]Class B pharmacy as defined in Subsection 58-17b-102(11), or a facility that provides out-~~[-]~~patient health care services whose primary practice includes the therapeutic use of drugs related to a specific patient for ~~the purpose of~~:

(a) curing or preventing the patient's disease;

(b) eliminating or reducing the patient's disease; or

(c) arresting or slowing a disease process.

(10) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(11) "Co-licensed product" means a device or prescription drug for which two or more persons have the right to engage in the manufacturing, marketing, or both consistent with 21 CFR 203 (2021) ~~[FDA's implementation of the Prescription Drug Marketing Act as applicable]~~.

(12) "Community pharmacy" as used in Subsection 58-17b-625(3)(b) means a ~~[e]~~Class A pharmacy as defined in Subsection 58-17b-102(10).

(13) "Compounding," as defined in ~~[Section]~~Subsection 58-17b-102(18), in accordance with 21 U.S.C. 353a(e) Pharmacy Compounding, does not include:

~~(a) mixing, reconstituting, or other such acts that are performed in accordance with directions [contained] in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with that labeling[-]; or~~

(b) the addition of flavoring agents to conventionally manufactured and commercially prepared available liquid medications, if the flavoring agents:

(i) are therapeutically inert; and

(ii) do not exceed 5% of a preparation's total volume.

(14) "Consulting pharmacist" means a licensed pharmacist who provides consultation on an aspect of a pharmaceutical administration facility under Section R156-17b-614c.

(14)15) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(15)16) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2) [~~including any amendments thereto~~].

(16)17) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(17)18) "Dispense," as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(19) "Designated representative" or "DR" means an individual supervising the licensed facility in accordance with Subsections R156-17b-615(4) and (5).

(18)20) "Device" means a prescription device as defined in 21 CFR 801.109 (2021). [~~an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, that is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."~~]

(19)21) "DMP" means a dispensing medical practitioner licensed under Title 58, Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy.

(20)22) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

- (A) Chapter 67, Utah Medical Practice Act;
- (B) Chapter 68, Utah Osteopathic Medical Practice Act;
- (C) Chapter 70a, Physician Assistant Act;
- (D) Chapter 31b, Nurse Practice Act;
- (E) Chapter 16a, Utah Optometry Practice Act;
- (F) Chapter 44a, Nurse Midwife Practice Act; or
- (G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102(12);

(b) meets requirements [~~established~~] in Subsection 58-17b-803 (4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program [~~that meets standards established in~~] under Section R156-17b-622.

(21)23) "DMPIC" means a dispensing medical practitioner in charge licensed under Title 58, Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

(22)24) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(23)25) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists [~~for the purpose of~~] evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(24)26) "Drugs," as used in this rule, means drugs or devices.

(25)27) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

(26)28) "Entities under common administrative control" means an entity holds the power, actual as well as legal, to influence the management, direction, or functioning of a business or organization.

(27)29) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(28)30) "ExCPT[~~;~~]" [~~as used in this rule,~~] means the Exam for the Certification of Pharmacy Technicians.

(29)31) "FDA" means the United States Food and Drug Administration and any successor agency.

(30)32) "FDA-~~[a]~~Approved" means the federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. Section 301 et seq. and regulations promulgated thereunder permit the subject drug or device to be lawfully manufactured, marketed, distributed, and sold.

(31)33) "High-risk, medium-risk, and low-risk drugs" refers to the risk level to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797 [~~for details of determining risk level~~].

(32)34) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(33)35) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(34)36) "Legend drug" or "prescription drug" means a drug or device that has been determined to be unsafe for self-

## NOTICES OF PROPOSED RULES

medication or ~~[a drug or device]~~one that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(~~[35]~~37) "Long-term care facility" as used in Section 58-17b-610.7 means the same as defined in Section 58-31b-102.

(~~[36]~~38) "Maintenance medications" means medications the patient takes on an ongoing basis.

(~~[37]~~39)(a) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition.

(b) A manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler ~~[under this chapter]~~ and be an "authorized distributor of record" to be considered part of the normal distribution channel.

(~~[38]~~40) "Medical supplies" means items for medical use that are:

(a) suitable for use in a health care facility or in the home; and

(b) disposable or semi-disposable and non-reusable.

(~~[39]~~41) "MPJE" means the Multistate Jurisprudence Examination.

(~~[40]~~42) "NABP" means the National Association of Boards of Pharmacy.

(~~[41]~~43) "NAPLEX" means North American Pharmacy Licensing Examination.

(~~[42]~~44) "[~~Non-drug~~]Non-drug or device handling central prescription processing pharmacy" means a central prescription processing pharmacy that does not engage in compounding, packaging, labeling, dispensing, or administering of drugs or devices.

(~~[43]~~45) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (~~[22]~~24), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, ~~[third party]~~third party logistics provider, or the exclusive distributor, to:

(a) a pharmacy or other designated persons authorized ~~[under this chapter]~~ to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized ~~[under this chapter]~~ to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized ~~[under this chapter]~~ to dispense or administer such drug for use by a patient.

(~~[44]~~46) "Other health care facilities" means an~~[y]~~ entity as defined in Subsection ~~[26-21-2(13)(a) or Subsection-]~~R432-1-3(55).

(~~[45]~~47) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(~~[46]~~48) "Patient's agent" means a:

(a) relative, friend, or other authorized designee of the patient involved in the patient's care; or

(b) if requested by the patient or the individual under Subsection (~~[40]~~45)(a), one of the following facilities:

(i) an office of a licensed prescribing practitioner in Utah;

(ii) a long-term care facility where the patient resides; or

(iii) a hospital, office, clinic or another medical facility that provides health care services.

(~~[47]~~49) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(~~[48]~~50) "PIC," as used in this rule, means the pharmacist-in-charge.

(~~[49]~~51) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment where the prepackaging occurred.

(~~[50]~~52) "Prescription files" means ~~[hard copy]~~hard copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(~~[51]~~53) "Professional entry degree," as used in Subsection 58-17b-303(1)(f), means the professional entry degree offered by the applicant's ~~[ACPE-accredited]~~ACPE-accredited school or college of pharmacy in the applicant's year of graduation, either a baccalaureate in pharmacy (BSPharm) or a doctorate in pharmacy (PharmD).

(~~[52]~~54) "PTCB" means the Pharmacy Technician Certification Board.

(~~[53]~~55) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(~~[54]~~56) "Refill" means to fill again.

(~~[55]~~57) "Remote dispensing pharmacist-in-charge" or "RDPIC" means the PIC of a remote dispensing pharmacy. The RDPIC shall be the PIC of the remote dispensing pharmacy's supervising pharmacy.

(~~[56]~~58) "Remote dispensing pharmacy" means a Class A or Class B pharmacy located in Utah that serves as the originating site where a patient receiving services through a telepharmacy system is physically located and the practice of telepharmacy occurs, pursuant to Section R156-17b-614g.

(~~[57]~~59) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist or DMP responsible for dispensing the product to a patient.

(~~[58]~~60) "Research facility" means a facility where research takes place that has policies and procedures describing such research.

(61) "Responsible party" means the identity of the supervisor or director or the Class E pharmacy under Section R156-17b-617a.



(~~59~~62) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy ~~[for the purpose of]~~ removing those drugs from stock and destroying them.

(~~60~~63) "Self-administered hormonal contraceptive" means the same as defined in Subsection 26-~~62~~64-102(9).

(~~61~~64) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(~~62~~65) "Supervising pharmacy" means the Class A or Class B pharmacy responsible for overseeing the operation of a remote dispensing pharmacy, and whose PIC is the RDPIC for the remote dispensing pharmacy, pursuant to Section R156-17b-614g.

(~~63~~66) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

(~~64~~67) "Telepharmacy system" means a telecommunications and information technologies system that monitors the preparation and dispensing of prescription drugs and provides for related drug review and HIPAA-compliant patient counseling services using:

(a) asynchronous store and forward transfer as defined in Subsection 26-60-102(1);

(b) synchronous interaction as defined in Subsection 26-60-102(~~6~~7); or

(c) still image capture.

(~~65~~68) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale.

(~~66~~69) "Unauthorized personnel" means a person not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(~~67~~70) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(~~68~~71) "Unprofessional conduct," as defined in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter ~~[and]~~ 17b, Pharmacy Practice Act, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(~~69~~72) The "Utah Hormonal Contraceptive Self-screening Risk Assessment Questionnaire," adopted September 18, 2018, by the Division in collaboration with the Utah State Board of Pharmacy and Physicians Licensing Board, ~~[as posted on the Division's website]~~ which is incorporated by reference, is the self-screening risk assessment questionnaire approved by the Division pursuant to Section 26-~~62~~64-106.

(~~70~~73) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 41-NF 36), either First Supplement, dated August 1, 2018, or Second Supplement, dated December 1, 2018, which is hereby adopted and incorporated by reference.

(74) "Vaccine Administration Protocol" means the Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications, adopted September 24, 2020, by the Division in collaboration with the Board and Utah Physicians Licensing Board, which is incorporated by reference.

(~~71~~75) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by

federal law to sales based on the order of a physician to a person other than the consumer or patient.

(~~72~~76) "Wholesale distribution" means the same as 21 CFR 203.3(cc) (2021) ~~[distribution of drugs to persons other than consumers or patients, but does not include:~~

~~\_\_\_\_\_ (a) intracompany sales or transfers;~~

~~\_\_\_\_\_ (b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;~~

~~\_\_\_\_\_ (c) the sale, purchase, or trade of a drug pursuant to a prescription;~~

~~\_\_\_\_\_ (d) the distribution of drug samples;~~

~~\_\_\_\_\_ (e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;~~

~~\_\_\_\_\_ (f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;~~

~~\_\_\_\_\_ (g) the sale, purchase or exchange of blood or blood components for transfusions;~~

~~\_\_\_\_\_ (h) the sale, transfer, merger or consolidation of the whole or part, of the business of a pharmacy;~~

~~\_\_\_\_\_ (i) delivery of a prescription drug by a common carrier; or~~

~~\_\_\_\_\_ (j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto].~~

#### **R156-17b-105. Licensure - Administrative Inspection.**

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of ~~[any]~~ drugs or devices seized by the Division during an administrative inspection ~~[shall be handled]~~ is as follows:

(1) ~~[Any]~~ Legal drugs or devices ~~[found and temporarily seized by]~~ that the Division [that are found] finds to be in compliance with ~~[this chapter]~~ Title 58, Chapter 17b, Pharmacy Practice Act, shall be returned to the involved pharmacy's consulting pharmacist, designated representative, responsible party, PIC, RDPIC, or DMPIC, [of the pharmacy involved] at the conclusion of ~~[any]~~ the investigative or adjudicative proceedings and appeals.

(2)(a) ~~Drugs~~ ~~[Any drugs]~~ or devices ~~[that are temporarily seized by]~~ that the Division [that are found] finds to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of ~~[this rule]~~ Title 58, Chapter 17b, Pharmacy Practice Act, shall be destroyed by Division personnel at the conclusion of ~~[any]~~ the investigative or adjudicative proceedings and appeals.

~~\_\_\_\_\_ (b) The destruction of [any]-seized controlled substance drugs shall be witnessed by two Division individuals. A controlled substance destruction form shall be completed and retained by the Division.~~

(3) An investigator may, upon determination that the violations observed ~~[are of a nature that]~~ pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.[

~~\_\_\_\_\_ (4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC, RDPIC, or DMPIC and responsible party for the pharmacy to be used~~

~~for self-audits or pharmacy alerts initiated by the Division. The PIC, RDPIC or DMPIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.]~~

**R156-17b-309.7. Exemptions from Licensure - Opioid Treatment Program.**

(1) In accordance with Section 58-17-b-309.7 "under the direction of a pharmacist" means that the pharmacist has delegated to a ~~[licensed practitioner]~~ covered provider the authority to perform one or more selected dispensing tasks on behalf of the pharmacist:

(a) in accordance with ~~[all]~~ state and federal laws and rules; and

(b) under the general supervision of the pharmacist as defined in Subsection R156-1-102a(4)(c).

(2) ~~[Dispensing tasks that may be delegated include preparing, packaging, or labeling take home dosages and medications for subsequent use.~~

~~\_\_\_\_\_ (3) A [delegating] pharmacist retains accountability for the appropriate delegation of dispensing stasks [and for the pharmaceutical care of the patient].~~

(3) The covered provider is accountable for the accuracy of the dispensing task and shall consult the pharmacist as needed.

(4) A ~~[practitioner]~~ covered provider may not:

(a) further delegate to another person any dispensing task delegated to the ~~[practitioner]~~ covered provider by the pharmacist; or

(b) expand the scope of a delegated dispensing task without the express permission of the pharmacist.

**R156-17b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violating ~~[any provision of]~~ the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2)(a) failing to comply with the USP-NF Chapter 795 if applicable to activities performed;

(b) failing to comply with the USP-NF Chapter 797, if applicable to activities performed;

(3) failing to comply with ~~[the]~~ continuing education requirements ~~[set forth in these rules]~~;

(4) failing to provide the Division with a current mailing address within ~~[a 10 business day period of time following any] ten business days of a change of address;~~

(5) defaulting on a student loan;

(6) failing to abide by ~~[all]~~ applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return ~~[according to]~~ a self-audit report by the deadline established by the Division ~~[or]~~;

(9) providing false information on a [self inspection] self-audit report;

(9)10(a) violating the laws and rules regulating operating standards in a pharmacy, as discovered upon inspection by the Division; or

(b) after discovery upon inspection by the Division of violation of laws and rules regulating operating standards in a pharmacy, failing to comply within the time established by the Division;

~~[(40)11]~~ abandoning a pharmacy or leaving prescription drugs accessible to the public;

~~[(44)12]~~ failing to identify licensure classification when communicating by any means;

~~[(12)13](a) as a pharmacist, practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio [established by] under Subsection R156-17b-606(1)(d), or pharmacist to pharmacy technician trainee ratio [as established by] under Subsection R156-17b-601(5)3; or~~

(b) as a pharmacy, practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio ~~[established by] under Subsection R156-17b-606(1)(d), or pharmacist to pharmacy technician trainee ratio [as established by] under Subsection R156-17b-601(5)4;~~

~~[(13)14](a) as a pharmacist, allowing an[y] unauthorized person[s] in the pharmacy; or~~

(b) as a pharmacy, allowing an[y] unauthorized person[s] in the pharmacy;

~~[(44)15](a) as a pharmacist, failing to offer to counsel a[ny] person receiving a prescription medication; or~~

(b) as a pharmacy, failing to offer to counsel a[ny] person receiving a prescription medication;

~~[(15)16] failing to timely pay an administrative fine [that has been assessed in the time designated by the Division];~~

[(16)17] failing to comply with the PIC, consulting pharmacist, RDPIC or DMPIC standards [as established in] under Section R156-17b-603;

[(17)18] failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

[(18)19] failing to take appropriate steps to avoid or resolve identified drug therapy management problems [as referenced in] under Subsection R156-17b-611(3);

[(19)20] dispensing medication that has been discontinued by the FDA;

[(20)21] failing to keep or report accurate records of training hours;

[(21)22] failing to provide consulting pharmacist, designated representative, responsible party, PIC, RDPIC, or DMPIC information to the Division within 30 days of a change in consulting pharmacist, designated representative, responsible party, PIC, RDPIC or DMPIC;

[(22)23] requiring a pharmacy, pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

[(23)24](a) as a pharmacist, failing under Subsection R156-17b-603(3)(t) to [update] notify the Division within seven calendar days of a[ny] change in the email address designated for use in self-audits or pharmacy alerts; or

(b) as a pharmacy, failing to [update] notify the Division within seven calendar days of a[ny] change in the email address designated for use in self-audits or pharmacy alerts;

[(24)25] failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program [that meets standards established in] under Section R156-17b-622;

[(25)26] failing to make a timely report regarding dispensing of an opiate antagonist to the [d] Division and to the physician who issued the standing order, under [as required in] Section R156-17b-625; and

(~~26~~27) failing to comply with the operating standards for a remote dispensing pharmacy ~~[as established in]~~under Section R156-17b-614g.

**R156-17b-601. Operating Standards - Pharmacy Technician and Pharmacy Technician Trainee.**

In accordance with Subsection 58-17b-102(56), practice as a licensed pharmacy technician is defined as follows:

(1) A pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders, including:

- (a) receiving written prescriptions;
- (b) taking refill orders, including refill authorizations;
- (c) entering and retrieving information into and from a database or patient profile;
- (d) preparing labels;
- (e) retrieving medications from inventory;
- (f) counting and pouring into containers;
- (g) placing medications into patient storage containers;
- (h) affixing labels;
- (i) compounding;
- (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist;

(k) receiving new prescription drug orders when communicating telephonically or electronically, if the original information is recorded so the pharmacist may review the prescription drug order as transmitted, including accepting new prescription drug orders saved on voicemail for a pharmacist to review;

(l) transferring prescriptions under Sections 58-17b-604 and R156-17b-609;

~~(H)m~~ performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least:

(A) one year of experience working as a pharmacy technician; and

(B) ~~[at least]~~ six months of experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy, such as ~~[(e.g.)]~~ barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall:

(A) have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment~~];~~; and

(B) ~~[shall]~~ maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during ~~[all]~~ times that a pharmacy technician is checking medications; and

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology to be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes that identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

~~[(H)n]~~ additional tasks not requiring the judgment of a pharmacist.

(2) A pharmacy technician may not:

(a) receive a new prescription or medication order, except as described in Subsection (1)(k);

(b) clarify a prescription or medication order from a prescriber;

(c) perform a drug utilization review;

(d) perform final review of a prescribed drug prepared for dispensing;

(e) dispense a drug; or

(f) counsel a patient with respect to a prescription drug.

(3) A pharmacy technician may administer vaccines and emergency medications pursuant to delegation by a pharmacist under the Vaccine Administration Protocol~~[- Standing Order to Administer Immunizations and Emergency Medications, adopted March 26, 2019, by the Division in collaboration with the Utah State Board of Pharmacy and Utah Physicians Licensing Board, as posted on the Division website]~~, if the pharmacy technician:

(a) has completed the initial training required by Section R156-17b-621;

(b) is under ~~["]~~direct~~["]~~, on-site supervision by the delegating pharmacist as defined in Subsection R156-1-102a(4)(a); and

(c) for each renewal cycle after the initial training, has completed a minimum of two hours of continuing education in immunization or vaccine-related topics in accordance with Section R156-17-309.

(4) A pharmacy technician trainee:

(a) shall practice only under the direct supervision of a pharmacist, and in a ratio not to exceed one pharmacy technician trainee to one pharmacist; and

(b) may perform any task in Subsection (1), except performing checks of certain medications prepared for distribution filled or prepared by a technician within a Class B hospital pharmacy as described in Subsection (1)(~~H~~n).

**R156-17b-603. Operating Standards - Consulting Pharmacist, Pharmacist-In-Charge, Remote Dispensing Pharmacist-In-Charge, or Dispensing-Medical-Practitioner-In-Charge.**

(1) The consulting pharmacist, PIC, RDPIC, or DMPIC shall have the responsibility to oversee the operation of the pharmacy in conformance with ~~[all]~~ laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment, and medical supplies. The consulting pharmacist, PIC, RDPIC, or DMPIC shall be personally in full and actual charge of the pharmacy.

## NOTICES OF PROPOSED RULES

(2)(a) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a unique email address shall be established by the consulting pharmacist, PIC, RDPIC, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division.

(b) The consulting pharmacist, PIC, RDPIC, DMPIC, or responsible party shall notify the Division of the pharmacy's email address in the initial application for licensure.

(3) The duties of the consulting pharmacist, PIC, RDPIC, or DMPIC shall include:

(a) assuring that a pharmacist, pharmacy intern, DMP, or DMP designee dispenses drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern, or DMP communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist, pharmacy intern, or DMP;

(d) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(e) education and training of pharmacy personnel;

(f) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(g) disposal and distribution of drugs from the pharmacy;

(h) bulk compounding of drugs;

(i) storage of ~~[all]~~ materials, including drugs, chemicals and biologicals;

(j) maintenance of records of ~~[all]~~ transactions of the pharmacy necessary to maintain accurate control over and accountability for ~~[all]~~ pharmaceutical materials required by applicable state and federal laws and regulations;

(k) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(l) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(m) legal operation of the pharmacy including meeting ~~[all]~~ inspection and other requirements of ~~[all]~~ state and federal laws, rules and regulations governing the practice of pharmacy;

(n) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(o) if permitted to use an automated pharmacy system for dispensing purposes:

(i) ensuring that the system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards; and

(ii) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(p) assuring that ~~[all]~~ relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(q) assuring that ~~[all]~~ pharmacy personnel have the appropriate licensure;

(r) assuring that no pharmacy operates with a ratio of pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(s) assuring that the consulting pharmacist, PIC, RDPIC, or DMPIC assigned to the pharmacy is recorded with the Division on a form provided by the Division, and that the Division is notified of a change in consulting pharmacist, PIC, RDPIC, or DMPIC within 30 days of the change;~~and~~

(t) assuring, with regard to the unique email address used for self-audits and pharmacy alerts, that the pharmacy:

(i) ~~[the pharmacy]~~ uses a single email address; and

(ii) ~~[the pharmacy]~~ notifies the Division, on the form prescribed, of a~~ny~~ change in the email address within seven calendar days of the change~~[-]~~;

(u) under Subsection 58-17b-103(1), conducting a pharmacy self-audit on a form provided by the Division, in accordance with the following timeframes:

(i) within 30 days of a change o consulting pharmacist, PIC, DMPIC or RDPIC;

(ii) within 30 days of the opening of a new facility; and

(iii) at least 90 days prior to the end of each renewal cycle; and

(iv) maintaining each pharmacy self-audit form for a period of two years from the date of the self-audit.

### **R156-17b-604. Operating Standards - Closing a Pharmacy.**

~~[At least 14 days prior to the closing of a pharmacy, the]~~(1) The consulting pharmacist, DR, Responsible Party, PIC, RDPIC, or DMPIC of the registered pharmacy shall comply with 21 CFR 1301.52 (2021) and 21 CFR 1305.18 and 1305.19 (2021).~~[the following:~~

~~(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:~~

~~(a) the name, address and DEA registration number of the pharmacy;~~

~~(b) the anticipated date of closing;~~

~~(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and~~

~~(d) the date the transfer of controlled substances will occur.]~~

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at ~~[all]~~ public entrance doors to the pharmacy. ~~[Such]~~The closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address, and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the consulting pharmacist, PIC, RDPIC, or DMPIC shall remove ~~[all]~~ prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell, or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move ~~[all]~~ signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within ten days of the closing of the pharmacy, the pharmacy owner, consulting pharmacist, DR, Responsible Party, PIC, RDPIC, or DMPIC shall forward to the Division a surrender~~[written]~~ notice, on a form provided by the Division, of the closing that includes the following information:

(a) the actual date of closing;

(b) a surrender of the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(4) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed; and

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) ~~[If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:~~

~~(a) DEA registration certificate;~~

~~(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and~~

~~(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.~~

~~(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the consulting pharmacist, DR, Responsible Party, PIC, RDPIC, or DMPIC cannot provide notification 14 days prior to the closing, the consulting pharmacist, PIC, RDPIC, or DMPIC shall comply with [the provisions of] Subsection (1) as far in advance of the closing as allowed by the circumstances.~~

~~(8) If the consulting pharmacist, DR, Responsible Party, PIC, RDPIC, or DMPIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with [the provisions of] this section.~~

~~(9) Notwithstanding the requirements of this section, a DMP clinic pharmacy that closes but employs licensed practitioners who [desire to] will continue providing services other than dispensing may continue to use prescription drugs in their practice as authorized under their respective licensing act.~~

#### **R156-17b-605. Operating Standards - Inventory Requirements.**

(1) ~~[All out of date]~~ Authorized personnel shall remove out-of-date legend drugs and controlled substances ~~[shall be removed]~~ from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the consulting pharmacist, PIC, RDPIC, or DMPIC shall be responsible for taking ~~[all]~~ required inventories, but may

delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include ~~[all]~~ each stock[s] of controlled substances on hand on the date of the inventory, including any that are ~~[out of date]~~ out-of-date drugs and drugs in automated pharmacy systems[-];

~~(e) [A]~~ [e] an inventory taken by use of a verbal recording device shall be promptly transcribed;

~~(f) [f]~~ [e] the inventory may be taken either as the opening of the business or the close of business on the inventory date;

~~(g) [g]~~ [f] the person taking the inventory and the consulting pharmacist, PIC, RDPIC, or DMPIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken[-];

~~(h) [T]~~ [f] the signature of the consulting pharmacist, PIC, RDPIC, or DMPIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

~~(i) [i]~~ [g] the person taking the inventory shall make an exact count or measure ~~[all]~~ controlled substances listed in Schedule I or II;

~~(j) [j]~~ [h] the person taking the inventory shall make an estimated count or measure of ~~[all]~~ Schedule III, IV, or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

~~(k) [k]~~ [i] the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

~~(l) [l]~~ [j] if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

~~(a) [i] [all] pharmacies having [any] stock of controlled substances shall take an inventory, including out-of-date drugs and drugs in automated pharmacy systems, on the opening day of business[-]; [Such inventory shall include all controlled substances including any out of date drugs and drugs in automated pharmacy systems;]~~

~~(b) [if in the event] a pharmacy commences business with no [controlled substances on hand] Schedule I or II controlled substances, the pharmacy shall record this fact as the initial inventory[-] and shall document Schedule I and II controlled substance inventory separately from an inventory reporting no Schedule III, IV, and V controlled substances; [An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;]~~

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

## NOTICES OF PROPOSED RULES

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include ~~all~~ stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of ~~all~~ legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute ~~for the purpose of this section,~~ the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order form ~~s (Form)~~ 222 ~~{}.~~

~~(6) [Requirement for taking inventory when closing a pharmacy includes the PIC, RDPIC, DMPIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.~~

~~(7) All~~ A pharmacy ~~[pharmacies]~~ shall maintain a perpetual inventory of ~~all~~ Schedule II controlled substances that shall be reconciled according to facility policy.

### **R156-17b-612. Operating Standards - Prescriptions.**

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances ~~{}~~including prescription transfers~~}~~ shall be handled in accordance with 21 CFR 1306.25 (2021)~~[according to the rules of the Federal Drug Enforcement Administration].~~

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, or DMP.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee, DMP, or DMP designee.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) In accordance with Section 58-17b-604, prescriptions~~[Prescriptions]~~ for legend drugs having a remaining authorization for refill may be transferred by the pharmacist, pharmacy intern, pharmacy technician, at the discretion of the pharmacist on duty, or DMP at the pharmacy holding the prescription to a pharmacist, pharmacy intern, pharmacy technician, or DMP at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist, pharmacy intern, or DMP and receiving pharmacist, pharmacy intern, or DMP shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists, pharmacy interns, pharmacy technicians or DMPs or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist, pharmacy intern, or DMP transferring the prescription drug order shall void the prescription electronically or write void ~~{/}~~ or transfer on the face of the invalidated prescription manually;

(d) the pharmacist, pharmacy intern, or DMP receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist, pharmacy intern, pharmacy technician, or DMP to whom such prescription is transferred; and

(E) the name of the pharmacist, pharmacy intern, or DMP transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders that have been previously transferred; and

(f) a pharmacist, pharmacy intern, pharmacy technician, or DMP may not refuse to transfer original prescription information to another pharmacist, pharmacy intern, pharmacy technician, or DMP who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order ~~{/}~~.

(8) If there are no refill instructions on the original prescription drug order, or if ~~all~~ refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist or DMP may exercise professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, if:

(a) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a great quantity;

(b) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(c) either:

(i) a natural or manmade disaster has occurred that prohibits the pharmacist or DMP from being able to contact the practitioner; or

(ii) the pharmacist or DMP is unable to contact the practitioner after a reasonable effort, with the effort documented and the documentation available to the Division upon request;

(d) if the prescription was originally filled at another pharmacy:

(i) the patient has the prescription container label, receipt, or other documentation from the other pharmacy that contains the essential information; and

(ii) after a reasonable effort, the pharmacist or DMP is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription; and

(e) the pharmacist or DMP:

(i) informs the patient or patient's agent at the time of dispensing that the refill is being provided without practitioner authorization, and that authorization is required for future refills;

(ii) informs the practitioner of the emergency refill at the earliest reasonable time;

(iii) maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(iv) affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(13) In accordance with Subsection 58-37-6(7)(c), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

(14) A pharmacist or pharmacy intern may dispense an emergency refill prescription for a drug a patient is currently using and on file with the pharmacy, other than a controlled substance, without the prescribing practitioner's authorization if they are not available promptly, in accordance with Section 58-17b-608, for:

(a) a 30 day supply with the prescribing practitioners instructions; or

(b) the quantity last dispensed at the pharmacy pursuant to the prescription as either a fill or a refill.

### **R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.**

In accordance with Rules R156-1 and R156-37, and Subsections 58-17b-102(29), [and] 58-17b-102(30), 58-17b-602(1), [R156-82, and R156-1,] prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic ~~[means of]~~ communication shall be handled according to ~~[Part 1304.04 of Section 21 of the CFR]~~ 21 CFR 1304.06 (2021).

(2) Prescription orders for non-controlled substances received by electronic ~~[means of]~~ communication may be dispensed

by a pharmacist, pharmacy intern, or DMP only if ~~[all of]~~ the following conditions are satisfied:

(a) ~~[all—electronically]~~ Electronically transmitted prescription orders shall include the following:

(i) ~~[all]~~ information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time, and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission~~[-]~~.

(b) ~~[the]~~ A prescription order shall be transmitted under the direct supervision of the prescribing practitioner or ~~[his]~~ the prescribing practitioner's designated agent~~[-]~~.

(c) ~~[the]~~ The pharmacist or DMP shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. ~~[-Practitioners or their agents transmitting medication orders using electronic equipment are to]~~

(d) A practitioner or the practitioner's agent shall provide voice verification when requested by the pharmacist receiving ~~[the]~~ a medication order.

(e) The pharmacist, pharmacy intern, pharmacy technician at the discretion of the pharmacist on duty, or DMP [is responsible for—assuring] shall assure that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner that has been transmitted to the dispensing pharmacy before filling it, whenever there is a question~~[-]~~.

~~[(d)]~~ (i) A [—a] practitioner may authorize an agent to electronically transmit a prescription ~~[provided that]~~ if the agent's [the] identifying information ~~[of the transmitting agent]~~ is [included] on the transmission.

(ii) The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription[—and].

~~[(e)]~~ (3) an electronically transmitted prescription order that meets the requirements [above] of Subsection (2) shall be [deemed to be] the original prescription.

(3) (4) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

~~[(4)]~~ (5) [No] An agreement between a prescribing practitioner and a pharmacy ~~[shall]~~ may not require that prescription orders be transmitted by electronic means from the prescribing practitioner only to that pharmacy~~[-only]~~.

(5) (6) The pharmacist or DMP shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) (7) Wholesalers, distributors, manufacturers, pharmacists, and pharmacies [shall] may not supply electronic equipment to a ~~[ny]~~ prescriber for transmitting prescription orders.

(7) (8) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) (9) Prescription orders electronically transmitted to the pharmacy by the patient [shall] may not be filled or dispensed.

(9) (10) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted in accordance with 21 CFR 1306.22 (2021) [by law] or by the prescriber by electronic transmission, if:

(a) [—providing] the pharmacies share a real-time, on~~[-]~~line database;

~~\_\_\_\_\_ (b) [provided that:~~  
~~\_\_\_\_\_ (a)]~~the information required to be on the transferred prescription has the same information ~~[as]~~described in Subsection R156-17b-612(5)(a) through (f); and

~~(b)]~~(c) pharmacists, pharmacy interns, pharmacy technicians, or pharmacy technician trainees, DMPs, and DMP designees electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

- (i) the fact that the prescription drug order was transferred;
- (ii) the unique identification number of the prescription drug order transferred;
- (iii) the name of the pharmacy to which it was transferred;
- and
- (iv) the date and time of the transfer.

**R156-17b-614a. Operating Standards - Class A or Class B Pharmacy - General Operating Standards.**

In accordance with Subsection 58-17b-601(1), the following operating standards apply to Class A and Class B pharmacies, and may be supplemented or amended by additional standards ~~[defined]~~in this rule applicable to specific types of Class A and B pharmacies.

(1) The general operating standards include:

(a) A facility shall be well lighted, well ventilated, clean and sanitary.

(b) A facility that transfers a drug from a manufacturer's or distributor's original container to another container shall have a sink with hot and cold culinary water separate and apart from restroom facilities. This sink requirement does not apply to clean rooms where sterile products are prepared. Clean rooms may not have sinks or floor drains.

(c) Required equipment shall be clean and in good operating condition.

(d) A facility shall be equipped to store prescription drugs and durable medical equipment:

(i) in an orderly manner that permits clear identification, separation, and easy retrieval of products; and

(ii) in an environment necessary to maintain the integrity of the product inventory.

(e) A facility shall be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice conducted within that facility.

(f) A facility shall be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public -safety.

(g) A facility that dispenses controlled substances shall be equipped with a security system that:

(i) permits detection of entry at all times when the facility is closed; and

(ii) provides notice of unauthorized entry to an individual.

(h) A ~~[facility]~~pharmacy department shall:

~~(i) be equipped with a lock [on each entrance] where drugs are stored; and~~

~~(ii) be securely locked when the pharmacy department is closed.~~

(i) A facility shall have a counseling area to allow for confidential patient counseling, if applicable.

(2)(a) Prescription labels for compounded sterile and non-sterile medications, when dispensed to the patient or patient's agent, shall include:

(i) the minimum information required under Section 58-17b-602;

(ii) generic name;

(iii) quantity or concentration of each active ingredient; and

(iv) labeling for sterile preparation for parenteral use shall include:

(A) the name of the diluent;

(B) assigned compounding record or lot number; and

(C) the phrase "compounded preparation."

(b) The requirements described in Subsections (2)(a)(i) and (2)(a)(iv) shall not apply to a label on the container of a drug that a health care provider administers to a patient at:

(i) a pharmaceutical administration facility; or

(ii) a hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(3) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a refrigerator or freezer is necessary to properly store drugs at the pharmacy, the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator or freezer on days of operation. The pharmacy shall retain each log entry for at least three years.

(4) A facility shall have current editions of the following reference publications in print or electronic format, that are readily available to and retrievable by facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) Rule R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) Rule R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) Rule R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) ~~[Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end]~~21 CFR 1300 et seq. (2021) or equivalent such as the USP DI Drug Reference Guides;

(j) current ~~[FDA-Approved]~~FDA-Approved Drug Products; and

(k) any other general drug references necessary to permit practice, as dictated by the usual and ordinary scope of practice conducted within that facility.

(5)(a) A facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility, that includes:

(i) individual licensee names;

(ii) license classifications;

(iii) license numbers; and

(iv) license expiration dates.

(b) The list shall be readily retrievable for inspection by the Division, and may be maintained in paper or electronic form.

(6) A pharmacy may not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility, or, for a remote dispensing pharmacy, physically present and immediately available in the facility or supervising through a telepharmacy system.

(7) Only a licensed Utah pharmacist, DMP, or authorized ~~[pharmacy]~~ personnel shall have access to the pharmacy when the pharmacy is closed.



(8) The facility or parent company shall maintain a record for ~~not less than~~ at least five years of the initials or identification codes that identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes ~~shall~~ may not be used.

(9) The pharmacy facility shall maintain:

(a) copy 3 of DEA order form ~~(Form-)~~ 222(j) that has been properly dated, initialed, and filed;

(b) ~~all~~ copies of each unaccepted or defective order form; and

(c) any attached statements or other documents.

(10) If applicable, a hard copy of a power of attorney authorizing a pharmacist, DMP, or DMP designee to sign DEA order form ~~s-(Form-)~~ 222(j) shall be available to the Division upon request.

(11) A pharmacist, DMP, or other responsible individual shall verify that controlled substances are listed on the suppliers' invoices and were actually received, by clearly recording their initials and the actual date of receipt of the controlled substances.

(12) The ~~pharmacy-~~ facility shall maintain a record of suppliers' credit memos for controlled substances.

(13) A copy of the inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(14) The ~~pharmacy-~~ facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(15) If the pharmacy does not store drugs in a locked cabinet and has a drop or false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or the pharmacy shall take other measures to prevent unauthorized entry into the pharmacy.

#### **R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.**

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following ~~applies with respect~~ operating standards apply to prescription drugs ~~which~~ that are held, stored, or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed consulting pharmacist shall provide consultation on ~~all~~ each aspect[s] of pharmacy services in the facility; establish a system of records of receipt and disposition of ~~all~~ controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of ~~all~~ prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician, and ~~must~~ shall be in compliance with 21 CFR 1317 (2021) ~~[DEA regulations]~~.

(3) Prescriptions for patients in the facility ~~can~~ may be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed

according to Title 58, Chapter 37, Utah Controlled Substances Act, and Rule R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall ~~at all times~~ remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and ~~all~~ related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

#### **R156-17b-621a. Operating Standards - Pharmacist Administration of a Long-acting Injectable ~~Drug Therapy~~ and Naloxone - Training.**

In accordance with Subsections 58-17b-502(1)(i) and 58-17b-625(2):

(1) Prior to engaging in the administration of a long-acting injectable drug pursuant to Section 58-17b-625, a pharmacist shall successfully complete:

(a) current Basic Life Support (BLS) certification; and

(b) a training program for administering long-acting injectables intramuscularly that is provided by an ~~ACPE accredited~~ ACPE-accredited provider.

(2) An individual who engages in the administration of long-acting injectable drugs intramuscularly shall:

~~(a) maintain documentation that they obtained their required training prior to any administration; and~~

~~(b) for each renewal cycle after the initial training, successfully complete at least two hours of continuing education related to administering long-acting injectable drugs, in accordance with Section R156-17b-309].~~

#### **R156-17b-627. Operating Standards - Prescription of Drugs or Devices by a Pharmacist.**

(1) In accordance with Subsection 58-17b-601(1) and Section 58-17b-627, a pharmacist from a Class A or Class B pharmacy may prescribe a prescription drug or device as follows:

(a) Prior to prescribing, the pharmacist shall conduct a patient assessment that includes:

(i) current health status;

(ii) past medical history;

## NOTICES OF PROPOSED RULES

(iii) allergies;

(iv) medication sensitivities;

(v) rationale for care;

(vi) current medication; and

(vii) if the pharmacist should refer the patient to an appropriate health care provider or otherwise encourage the patient to seek further medical care.

(b) The pharmacist shall follow the guidelines for prescribing health care providers established by:

(i) the Centers for Disease Control and Prevention;

(ii) nationally accepted guidelines; and

(iii) the Department of Health and the Division in collaboration with the Board, in the guidance documents incorporated by reference in Subsection (2).

(c) The pharmacist shall comply with the requirements of Sections 58-17b-602 and 58-17b-609.

(d) The pharmacist shall develop and implement an appropriate follow-up care plan with the patient that includes:

(i) monitoring parameters for efficacy and safety;

(ii) adverse reactions; and

(iii) further medical care.

(e)(i)(A) The pharmacist shall notify the patient's primary care or other health care provider about the prescription within five business days of the prescribing.

(B) The prescription notification may be conveyed in writing, by electronic transmission, or by telephone.

(C) If the patient does not have a primary care or other health care provider, the pharmacist shall provide the prescription notification to the patient.

(D) The pharmacy shall maintain the prescription notification in the patient record for at least five years from the date of notification, in an immediately retrievable written or electronic format.

(ii) Each prescription notification shall include the following:

(A) prescribing pharmacist;

(B) pharmacy name;

(C) pharmacy phone number;

(D) patient;

(E) patient date of birth;

(F) drug or device;

(G) if dispensed, dispensed quantity;

(H) directions for use;

(I) refill; and

(J) identity of the patient's primary care or other health care provider, if any.

(2)(a) A pharmacist may prescribe drugs or devices under Subsection 58-17b-627(3)(a) as established in the following guidance documents posted on the Division's website at [dopl.utah.gov/pharm](http://dopl.utah.gov/pharm):

(i) Utah Guidance for Pre-Exposure and Post-Exposure Prophylaxis of HIV, adopted September 28, 2021;

(ii) Utah Guidance for Self-Administered Hormonal Contraceptives, adopted September 28, 2021;

(iii) Utah Guidance for Tobacco Cessation Products, adopted September 28, 2021; and

(iv) Utah Guidance for Naloxone, adopted September 28, 2021.

(b) The Division incorporates by reference the guidance documents in Subsection (2)(a).

(3) The Division in collaboration with the Board shall review the guidance documents in Subsection (2) on a biennial basis,

in collaboration with the individuals identified in Subsection 58-17b-627(4) and other persons as determined by the Division in collaboration with the Board.

(4)(a) Beginning June 2022 and commencing annually thereafter, the Department of Health may submit to the Division a written proposal that includes:

(i) in accordance with Subsection 58-17b-627(3)(a), designated public health concerns that the Department of Health has determined can be addressed through pharmacist prescribing of drugs or devices; and

(ii) any recommendations for updates to the guidance documents in Subsection (2).

(b) After receipt of the Department of Health's annual designation, the Division:

(i) shall contact the Department of Health to review its proposal; and

(ii) may review the rules made by the Division, including the guidance documents in Subsection (2), in accordance with Subsections 58-17b-627(3) and (4).

(5) The Division shall review the guidance documents in Subsection (2) on a biennial basis, in collaboration with:

(a) the Board;

(b) the individuals identified in Subsection 58-17b-627(4); and

(c) other persons as determined by the Division.

**KEY:** pharmacists, licensing, pharmacies

**Date of Last Change:** ~~March 11, 2021~~ 2022

**Notice of Continuation:** September 5, 2019

**Authorizing, and Implemented or Interpreted Law:** 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R156-60b</b>	<b>Filing ID</b>	<b>54140</b>
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### Agency Information

<b>1. Department:</b>	Commerce		
<b>Agency:</b>	Occupational	and	Professional Licensing
<b>Building:</b>	Heber M Wells Building		
<b>Street address:</b>	160 E 300 S		
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2316		
<b>Mailing address:</b>	PO Box 146741		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6741		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jennifer Falkenrath	801-530-6628	jzaelit@utah.gov	

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

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

R156-60b. Marriage and Family Therapist Licensing Act Rule

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

Governor Cox issued Executive Order No. 2021-1 which required a review of all regulated Occupations and Professions. Based upon the Board's review, the Board proposes these amendments to this rule to reduce regulation that created barriers to working in the field, to clarify provisions regarding supervision, and to align provisions with national education standards for licensure. Additionally, in compliance with Executive Order No. 2021-12 issued by Governor Cox on 05/06/2021, this filing further amends this rule by making nonsubstantive formatting changes throughout to facilitate compliance and enforcement and to make changes consistent with the Utah Administrative Rulewriting Manual.

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

Section R156-60b-102 clarifies coursework identified in the rule as a deficiency and removes unnecessary language regarding supervision.

Section R156-60b-302a amends the practicum supervision to align with national education requirements.

Section R156-60b-302b amends this rule for clarity regarding supervision for a student in a doctorate program and further clarifies supervision.

Section R156-60b-302d clarifies continuing education for a marriage and family therapy supervisor.

Section R156-60b-502 amends unprofessional conduct to align with the American Association for Marriage and Family Therapy Code of Ethics.

Additional nonsubstantive formatting changes are made throughout this rule to facilitate compliance and enforcement and to make changes consistent with the Utah Administrative Rulewriting Manual.

A rule hearing will be held before the Division of Occupational and Professional Licensing (Division) electronically only via Google Meet information below. Join with Google Meet: [meet.google.com/qno-uxfb-wih](https://meet.google.com/qno-uxfb-wih); or join by phone: (US) +1 475-328-0593 (PIN: 732962552)

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The changes to Sections R156-60b-102, R156-60b-302a, and R156-60b-302b that reduce regulation and align provisions with national educational standards may result in a cost savings to agencies that are more able to employ licensees but calculating the savings specific to such state agencies is not possible because it will vary widely depending on the characteristics of each employer and employee. The amendments to Section R156-60b-502 defining violations with more particularity to align with the American Association for Marriage and Family Therapy Code of Ethics are expected to have zero net impact on state revenues or expenditures because these changes should not result in any additional complaints, investigations, or disciplinary actions or any additional licensing issues. None of the remaining proposed changes are expected to impact state government revenues or expenditures because the changes merely update this rule to establish supervision and education standards that encompass current requirements and practices in the profession and make formatting changes for clarity.

**B) Local governments:**

These proposed amendments may impact businesses in the mental health industry who employ associate marriage and family therapists, associate marriage and family therapist externs, and marriage and family therapists, which may potentially include certain local government entities acting as businesses. However, as described for Small Businesses, the Division estimates that these proposed amendments will have no impact on local governments.

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

There are approximately 743 small businesses in Utah with licensees engaged in the practice of mental health therapy and who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 622310). These proposed amendments may impact these small businesses. Specifically, the amendments to Section R156-60b-302a which amend the practicum supervision to a national standard for professionals who are learning proper techniques in a clinical setting. However, although these amendments may result in a cost savings to such businesses who are able to more easily hire licensees, the savings is not measureable as it will depend on specific characteristics of each employer and employee. The remaining amendments are not expected to impact small business as they are based on extensive collaboration with the Marriage and Family Therapist Licensing Board to incorporate generally accepted professional standards common in the industry, and the changes merely update rules, clarify existing statutes, rules, and codify existing standards already adhered to in the industry.

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

There are approximately 50 non-small businesses in Utah comprising of licensees engaged in the practice of mental health therapy who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 622310). These proposed amendments may impact these non-small businesses. Specifically, the amendments to Section R156-60b-302a which amend the practicum supervision to a national standard for professionals who are learning proper techniques in a clinical setting. However, although these amendments may result in a cost savings to such businesses who are able to more easily hire licensees, the savings is not measurable as it will depend on specific characteristics of each employer and employee. Additionally, the estimated fiscal benefit to students described in Box 5E from a resulting reduction in tuition is not expected to cause a corresponding indirect fiscal cost to non-small business schools (NAICS 611310) as it should be offset by the cost savings to the schools from reduced supervision and monitoring. The remaining amendments are not expected to impact small business as they are based on extensive collaboration with the Marriage and Family Therapist Licensing Board to incorporate generally accepted professional standards common in the industry, and the changes merely update rules, clarify existing statutes, rules, and codify existing standards already adhered to in the industry.

**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 amendments to Sections R156-60b-102, R156-60b-302a, and R156-60b-302b that clarify supervision and education standards, including amending practicum supervision requirements to align with national education requirements, are expected to result in an average \$1,200 reduction in tuition costs for a marriage and family therapy student who will be receiving supervised training through an educational practicum at a facility that engages in mental health. The Division estimates that approximately 100 marriage and family therapy students will benefit from this reduction in tuition costs per year, for a total direct fiscal benefit for these individuals per year ongoing of \$120,000 per year.

The amendments for Section R156-60b-302d will affect marriage and family therapist supervisors, who require continuing education to renew their license; however, these amendments are expected to have no fiscal impact for these persons because the amendments merely clarify existing standards and requirements.

The amendment to Section R156-60b-502 defining a violation of unprofessional conduct is not expected to impact these other persons as it should not result in any additional investigations or disciplinary actions; the

definition encompasses existing practices. Further, the goal of defining unprofessional conduct is to provide a deterrent, such that there is \$0 net impact on all parties involved and minimal occasions for noncompliance, so for the typical person the amendments would have no direct or indirect fiscal impact.

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

As described above for other persons, there are no expected compliance costs for affected persons as the amendments will result in either a savings to affected persons or will have no measurable impact on 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):

The Division proposes amendments to the Marriage and Family Therapist Licensing Act Rule. The Division has updated this rule to conform to Executive Order No. 2021-1, and after the Board's review, the Board proposes these amendments to this rule to reduce regulations and align provisions with national education standards for licensure. Further, in compliance with Executive Order No. 2021-12 issued by Governor Cox on 05/06/2021, this filing makes nonsubstantive formatting changes to comport to the Utah Administrative current Rulewriting Manual.

**Small Businesses (less than 50 employees):**

There are approximately 743 small businesses in Utah with licensees engaged in the practice of mental health therapy and who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 622310). These amendments may result in a cost savings to such businesses who are able to more easily hire licensees. The proposed rule is not expected to impact small business revenues or expenditures. The Division estimates that approximately 100 marriage and family therapy students will benefit from this reduction in tuition costs per year, for a total direct fiscal benefit for these individuals per year ongoing of \$120,000 per year. Further, no fiscal impact is expected for small businesses as the costs are either inestimable or there is no fiscal impact.

**Regulatory Impact to Non-Small Businesses (50 or more employees):**

There are approximately 50 non-small businesses in Utah comprising of licensees engaged in the practice of mental health therapy who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 622310). The Division estimates that approximately 100 marriage and family therapy students will benefit from this reduction in tuition costs per year, for a total direct fiscal benefit for these

individuals per year ongoing of \$120,000 per year. However, there will be no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small business. 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.)

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$120,000	\$120,000	\$120,000
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$120,000</b>	<b>\$120,000</b>	<b>\$120,000</b>

**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:**

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-60-301
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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:** 01/14/2022

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

On:	At:	At:
12/20/2021	10:30 AM	Rule hearing will be held before the Division electronically only via Google Meet (see information in box 4 above)

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	11/18/2021
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**R156. Commerce, Occupational and Professional Licensing.**

**R156-60b. Marriage and Family Therapist Licensing Act Rule.**

**R156-60b-102. Definitions.**

In addition to the definitions [regarding marriage and family therapy] in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Chapter 60, Mental Health Professional Practice Act [as used in Title 58, Chapters 1 and 60], the following rule definitions supplement the statutory definitions:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Deficiency," as used in Subsection 58-60-117(1)(d), means the educational degree upon which licensure to be based fails to include no more than a combined total of six semester or eight quarter hours in coursework listed in one or more of Subsections R156-60b-302a(20)(a) through (g):

- \_\_\_\_\_ (a) ~~theoretical foundations of marital and family therapy;~~
- \_\_\_\_\_ (b) ~~assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);~~
- \_\_\_\_\_ (c) ~~human development and family studies that include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;~~
- \_\_\_\_\_ (d) ~~research methodology and data analysis; and~~
- \_\_\_\_\_ (e) ~~electives in marriage and family therapy].~~

(3) "Direct supervision" is the same as defined under Subsection R156-60-102(4).

(~~3~~)4 "Directly related to marriage and family therapy", as used in Section R156-60b-304 and Subsection R156-60-105(1)(c), means that the continuing education course ~~meets at least one of the following criteria~~:

(a) is approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a Commission on Accreditation for Marriage and Family Therapy Education [COAMFTE] accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families. [~~\_\_\_\_\_~~]

(4) ~~"Face to face supervision" as used in this rule includes both individual and group supervision.~~

(5) ~~"Group supervision" means, in accordance with Section 58-60-307, supervision between the supervisor and no more than six individuals who are lawfully engaged in training for the practice of mental health therapy, unless the supervisor is granted an exception in writing from the Division in collaboration with the Board.~~

(6) ~~"Individual supervision" means supervision between the supervisor and one or two supervisees.~~

(~~7~~)5 "Practicum," as used in Subsection R156-60b-302a(2)(g) means a clinical program of training at an accredited school ~~[under general supervision]~~ in a setting other than a student's supervised private practice.

(~~8~~)6 "Unprofessional conduct" as defined in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Chapter 60, Mental Health Professional Practice Act, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

#### **R156-60b-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 60, Part 3, Marriage and Family Therapist Licensing Act.

#### **R156-60b-302a. Qualifications for Licensure - Education Requirements.**

(1) ~~[Pursuant to]~~Under Subsection 58-60-305(1)([d]c), an applicant applying for licensure as a marriage and family therapist shall produce certified transcripts evidencing completion of:

(a) a clinical master's or doctorate degree in marriage and family therapy, from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b) a clinical master's degree in marriage and family therapy or equivalent, from an [program]institution accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(2) ~~[A program]~~Certified transcripts evidencing completion of a degree under Subsection (1)(b) shall include the following:

(a) six semester hours or nine quarter hours of course work in theoretical foundations of marital and family therapy;

(b) nine semester hours or 12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual~~[(DSM)]~~;

(c) six semester hours or nine quarter hours of course work in human development and family studies that include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) three semester hours or four quarter hours in professional ethics;

(e) three semester hours or four quarter hours in research methodology and data analysis;

(f) three semester hours or four quarter hours in electives in marriage and family therapy; and

(g) a clinical practicum under supervision ~~[meeting the criteria of Sections R156-60b-302d and R156-60-302, which]~~that includes at least ~~[600]~~400 hours as follows:

(i) ~~[at least]~~100 hours of ~~[face-to-face]~~direct supervision; and

(ii) ~~[at least 500]~~300 hours of mental health therapy under direct ~~[contact hours of face-to-face]~~supervised clinical practice, ~~[that]~~with at least ~~[250]~~150 hours in couple or family therapy with two or more clients participating.~~[shall be with couples or families who are physically present in the therapy room.]~~

#### **R156-60b-302b. Qualifications for Licensure - Supervised Training Requirements.**

(1) ~~[Pursuant to]~~Under Subsections 58-60-305(1)([e]d) and 58-60-305(1)([f]e) and Section R156-60-302, an applicant shall have completed a minimum of 4,000 hours of supervised marriage and family therapy training as follows:

(a) in not less than two years;

(b) while the applicant is engaged in mental health therapy as:

(i) a W-2 employee of a public or private agency~~engaged in mental health therapy~~; or

(ii) a doctorate program student who is not paid as a 1099 independent contractor;

(c) under ~~[the]~~supervision ~~[of a supervisor meeting the requirements of]~~that complies with Sections 58-60-307, [and Section] R156-60-302, and R156-60b-302d;

(d) ~~[in accordance with]~~under Subsections 58-60-305(1)([e]d) and 58-60-305(1)([f]e), include a minimum of 1,000 hours of supervised training in mental health therapy, with at least 500 hours in couple or family therapy with two or more clients participating~~[-]~~;

(e) count training hours completed in a group therapy session only if the applicant functioned as the primary therapist or co-therapist; and

(~~[i]~~)f ~~[at least]~~100 hours ~~[under]~~of direct supervision, spread uniformly and continually throughout supervised training~~[the training period; and~~

~~\_\_\_\_\_~~(ii) at least 500 hours in couple or family therapy with two or more clients participating and at least one physically present; and

~~\_\_\_\_\_~~(e) count training hours completed in a group therapy session only if the supervisee functions as the primary therapist].

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, and who has completed ~~[all or part]~~any of the marriage and family therapy training requirements outside the state if the applicant demonstrates, by evidence satisfactory to the Division and Board, that the training is equivalent to and meets the requirements for training under this ~~[S]~~section and Subsections 58-60-305(1)([e]d) and 58-60-305(1)([f]e).

**R156-60b-302c. Qualifications for Licensure - Examination Requirements.**

~~[Pursuant to]~~Under Subsection 58-60-305(1)(f), an applicant for licensure as a marriage and family therapist shall pass the ~~[Examination of]~~Marital and Family Therapy National Examination administered by the American ~~[written for the]~~Association of Marital and Family Therapy Regulatory Boards.

**R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.**

~~[Pursuant to]~~Under Subsection 58-60-307(1), to be qualified as a marriage and family therapist training supervisor under Subsections 58-60-305(1)(~~[e]~~d) and (~~[f]~~e) and Section R156-60-302, an individual shall:

(1) have been licensed in good standing as a marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse practitioner, or clinical social worker for at least two consecutive years prior to beginning supervised training;

(2) be currently licensed in good standing in the state that the training is being performed;

(3)(a) be currently approved by AAMFT as a marriage and family therapist supervisor;

(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (~~[COAMFTE]~~)-accredited marriage and family therapy (~~[MFT]~~) program at an accredited university; or

(c) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (~~[UAMFT]~~) as follows:

(i) four hours of review of models of ~~[MFT]~~marriage and family therapy and supervision;

(ii) eight hours of ~~[MFT]~~marriage and family therapy supervision processes and practice;

(iii) four hours of research on effective outcomes and processes of supervision; and

(iv) four hours of AAMFT Code of Ethics, state rules, and case studies related to ~~[MFT]~~marriage and family therapy supervision;

(4)(a) enter into a written supervision contract with the supervisee ~~[in accordance with Subsection]~~under Section R156-60-302; and

(b) ~~[provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee;~~

~~\_\_\_\_\_ (c)]~~comply with each of the duties and responsibilities uniformly established in Section R156-60-302; and

(5) for a supervisor meeting criteria in Subsection (3)(b) or (3)(c), in each two-year renewal cycle, complete four hours of the required 40 hours of continuing professional education in topics directly related to marriage and family therapy supervisor training.

**R156-60b-303. Renewal Cycle - Procedures.**

(1) ~~[In accordance with]~~Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, Mental Health Professional Practice Act, is established ~~[by rule]~~in ~~[Section]~~Subsection R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Sections R156-1-308~~[e]~~b through R156-1-308~~[l]~~i and R156-60b-306.

**R156-60b-304. Continuing Education.**

~~[In accordance with]~~Under Section 58-60-105, the continuing professional education requirements for a marriage and

family therapist licensed under Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act, are ~~[established]~~in Section R156-60-105.

**R156-60b-306. License Reinstatement ~~[Requirements]~~- Between Two Years and Five Years After Expiration.**

~~[In accordance with]~~Under Subsection 58-1-308(5)(ii)(B) and subject to ~~[Section]~~Subsection R156-1-308g(~~[4]~~3)(b), an applicant for reinstatement of a license that was active and in good standing at expiration, between two years and five years ~~[more than two years]~~after the date of expiration~~[the license expired]~~ shall:

(1) upon request, meet with the Board to evaluate the applicant's ability to safely and competently practice as a marriage and family therapist, and determine any additional education, experience, or examination requirements before reinstatement;

(2) ~~[upon the recommendation of]~~if recommended by the Board, establish a plan of supervision under an approved supervisor that may include up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) if recommended by the Board, pass the ~~[Examination of]~~Marital and Family Therapy National Examination administered by~~[of]~~ the American Association for Marriage and Family Therapy Regulatory Boards~~[Therapists if the Board determines it necessary to demonstrate the applicant's ability to safely and competently practice as a marriage and family therapist]; and~~

(4) as required by the Board, complete a minimum of 40 hours of professional education in subjects determined by the Board~~[as necessary to ensure the applicant's ability to safely and competently practice as a marriage and family therapist]~~.

**R156-60b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring compliance with ~~[the requirements of]~~Sections R156-60-302 and R156-60b-302d;

(2) engaging in the supervised practice of mental health therapy if not in compliance with Sections R156-60-302 ~~[or]~~and R156-60b-302b;

(3) engaging in or aiding or abetting conduct or practices that are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to maintain professional boundaries with a client by entering into a dual or multiple relationship without ensuring that there has been no exploitation or injury to the client or to the client's immediate family;~~[within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:~~

~~\_\_\_\_\_ (a) dual or multiple relationships; or~~

~~\_\_\_\_\_ (b) romantic, intimate or sexual relationship;]~~

(6) [if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family]~~[with or without client consent, failing to maintain professional boundaries with a client after the formal termination of therapy or last professional contact, including engaging in a romantic, intimate, or sexual relationship;~~

(7) engaging in sexual activities or sexual contact with a client's relative or other individual with whom the client maintains a relationship, if that individual is especially vulnerable or susceptible

## NOTICES OF PROPOSED RULES

to being disadvantaged because of the personal history, current mental status, or any condition that could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance that exists or may exist between the marriage and family therapist and that individual;

(8) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(9) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(10) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(15) failure to cooperate with the Division during an investigation; ~~and~~ or

(16) violating a provision of the Revised AAMFT Code of Ethics effective January 1, 2015, which is adopted and incorporated by reference.

**KEY: licensing, therapists, marriage and family therapist**

**Date of Last Change:** ~~November 10, 2020~~ **2022**

**Notice of Continuation:** June 13, 2019

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Repeal

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-301</b>	<b>Filing ID</b> <b>54174</b>
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### Agency Information

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	Multi-Agency State Office Building
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144820
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820

### Contact person(s):

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bo Wood	385-499-3416	rwood@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R307-301. Utah and Weber Counties: Oxygenated Gasoline Program as a Contingency Measure

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

During the required five-year review analysis, the Division of Air Quality (DAQ) staff determined that this rule is no longer necessary. This rule was originally adopted as a contingency measure for the carbon monoxide (CO) attainment and maintenance state implementation plan (SIP) revisions for Utah and Weber counties, last approved by the Air Quality Board in 2004. This rule requires gasoline sold in Utah and Weber Counties between November 1 and the end of February to be oxygenated with a 2.7% minimum blend of ethanol, should the area violate the standard and the contingency be triggered.

According to the U.S. Department of Energy, more than 98% of gasoline sold in the United States today is oxygenated with a blend of 10% ethanol, exceeding the 2.7% required by this rule. Considering this, the DAQ in consultation with the Environmental Protection Agency, have determined that this rule is no longer required to meet any SIP requirements.

Additionally, monitored data shows that neither area has exceeded the CO standard since 1993. The DAQ continues to operate an air quality monitoring network in accordance with 40 CFR Part 58 to verify the continued attainment of the CO NAAQS, but as CO emissions continue to decline, it is unlikely that a violation of the 8-Hour CO standard will occur.

#### 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.

A public hearing is set for Tuesday, 01/18/2022. Further details may be found below. The hearing will be cancelled should no request for one be made by Monday, 01/17/2022 at 10:00am MST. The final status of the public hearing will be posted on Monday, 01/17/2022, after 10:00AM MST. The status of the public hearing may be checked at the following website location under the corresponding rule.



<https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment>

### Fiscal Information

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

##### A) State budget:

There are no anticipated costs or savings to the state budget because the tax credit no longer exists.

##### B) Local governments:

There are no anticipated costs or savings to local governments because this rulemaking is not applicable to them.

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

There are no anticipated costs or savings to small businesses because the tax credit no longer exists.

##### 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 tax credit no longer exists.

##### 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 for persons other than small businesses, and non-small businesses, state, or local government because the tax credit no longer exists.

##### 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):

DAQ does not expect any measurable fiscal impact on businesses due to this rule repeal. Kimberly D. Shelley, Executive Director

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

### Regulatory Impact Table

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

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

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved of this impact analysis.

### Citation Information

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

Section 19-2-101

Section 19-2-104

### Public Notice Information

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

A) Comments will be accepted until: 01/14/2022

<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
01/18/2022	10:00 am	https://meet.google.com/zvn-ketw-ftd, or 1-513-828-0269. PIN 107-613-936

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	12/01/2021
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**R307. Environmental Quality, Air Quality.****~~[R307-301. Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure.~~****~~R307-301-1. Definitions.~~**

~~The following additional definitions apply to R307-301.~~

~~"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party or blender control area responsible party must comply with the average oxygen content standard.~~

~~"Blender control area responsible party (blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.~~

~~"Blending Allowance" means the amount of oxygen a gasoline blend is allowed above its upper oxygen content limit. Any gasoline blended under the provisions of 42 U.S.C. 7545(f)(1) addressing substantially similar fuels are permitted a blending allowance of 0.2% oxygen by weight. Blending allowances are not given to gasoline blends granted a waiver by the Administrator under 42 U.S.C. 7545(f)(4).~~

~~"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.~~

~~"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period.~~

~~"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit control additives.~~

~~"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.~~

~~"Control area terminal" means either a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, or a terminal at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives, or both. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.~~

~~"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.~~

~~"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet or wholesale purchaser consumer's installation. A distributor is a blender CAR if the distributor alters the oxygen content of gasoline intended for use in any control area through the addition of one or more oxygenates, or lowers its oxygen content below the minimum oxygen content specified in R307-301-6.~~

~~"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.~~

~~"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) or state specifications.~~

~~"Non oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.~~

~~"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon the percent by volume of each type of oxygenate contained in the gasoline blend, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.~~

~~"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar as provided for under 42 U.S.C. 7545(f)(1), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of 42 U.S.C. 7545(f)(4).~~

~~"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.~~

~~"Oxygenated gasoline" means any gasoline which contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, that was produced through the addition of one or more oxygenates to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party or blender control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the requirement of 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, will prevent or interfere with attainment of the PM<sub>10</sub> National Ambient Air Quality Standard and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under 42 U.S.C. 7545, the waiver amount granted by the Administrator of the Environmental Protection Agency shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or substantially similar ruling as unleaded gasoline as described in the definition of oxygenate.~~

~~"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.~~

~~"Refinery" means a plant at which gasoline is produced.~~

~~"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser consumer.~~

~~"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.~~

~~"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.~~

~~"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser consumer installations.~~

~~"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h or IX.C.6.e of the state implementation plan.~~

~~"Wholesale purchaser consumer" means any organization that:~~

~~(1) is an ultimate consumer of gasoline;~~

~~(2) purchases or obtains gasoline from a supplier for use in motor vehicles; and~~

~~(3) receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.~~

~~"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.~~

#### **R307-301-2. Applicability and Control Period Start Dates.**

~~(1) Unless waived under authority of 42 U.S.C. 7545(m)(3) by the Administrator of the Environmental Protection Agency, R307-301 is applicable in Utah and Weber Counties.~~

~~(2) The first control period for areas for which R307-301 is applicable begins on November 1 following the trigger date for the county in which it has been triggered.~~

#### **R307-301-3. Average Oxygen Content Standard.**

~~(1) All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in R307-301-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% oxygen by weight.~~

~~(2) The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the control period.~~

~~(3) All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) Regulation of Fuels and Fuel Additives.~~

~~(4) Any gasoline blended under 42 U.S.C. 7545(f)(1) dealing with substantially similar fuels must be blended in compliance with the criteria specified in the substantially similar ruling. Any extra volume of oxygenate or oxygenates added to gasoline blended under a substantially similar ruling as provided for under 42 U.S.C. 7545(f)(1) in excess of the criteria specified in 42 U.S.C. 7545(f)(1) may not be included in the compliance calculations specified in R307-301-5(2) and (3).~~

~~(5) Any gasoline blended under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4) must be blended in compliance with the criteria specified in the appropriate waiver. Gasoline blends waived to oxygen content above 2.7% oxygen by weight are not permitted a blending allowance~~

~~for blending tolerance purposes. Any extra volume of oxygenate in excess of the criteria specified in the appropriate waiver may not be included in the compliance calculations specified in R307-301-5(2) or (3).~~

~~(6) Oxygen content shall be determined in accordance with R307-301-4.~~

#### **R307-301-4. Sampling, Testing, and Oxygen Content Calculations.**

~~(1) For the purpose of determining compliance with the requirements of R307-301, the oxygen content of gasoline shall be determined by one or both of the two following methods:~~

~~(a) Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended Supplementary Information Oxygen Content Conversions, published in the Federal Register on October 20, 1992.~~

~~(b) Chemical Analysis Method:~~

~~(i) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;~~

~~(ii) Determine the oxygenate content of the sample by use of:~~

~~(A) the test method specified in ASTM Designation D4815-93, Testing Procedures Method ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography;~~

~~(B) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or~~

~~(C) an alternative test method approved by the director.~~

~~(iii) Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in (3) below.~~

~~(2) All volume measurements required in R307-301-4 shall be adjusted to 60 degrees Fahrenheit.~~

~~(3) For the purposes of R307-301, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:~~

TABLE

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction	specific gravity
	oxygen	at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7809
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary butyl ether (ETBE)	0.1566	0.7452

~~(4) Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.~~

(5) Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in (1) above. Documentation shall include the percent oxygen by weight, each type of oxygenate, the purity of each oxygenate, and the percent oxygenate by volume for each oxygenate. If a CAR or blender CAR alters the oxygen content of a gasoline intended for use within a control area during a control period, the CAR or blender CAR must determine the oxygen content of the gasoline by use of the methodology specified in (1) above.

#### **R307-301-5. Alternative Compliance Options.**

(1) Each CAR or blender CAR shall comply with the standard specified in R307-301-3 by means of the method set forth in either (2) or (3) below and shall specify which option will be used at the time of the registration required under R307-301-7.

(2) Compliance calculation on average basis.

(a) The CAR or blender CAR shall determine compliance with the standard specified in R307-301-3 for each averaging period and for each control area by:

(i) Calculating the total volume of gasoline labeled as oxygenated that is sold or dispensed, not including volume dispensed or sold to another CAR or blender CAR, for use in the control area which is the sum of:

(A) the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed;

(B) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in a different control area;

(C) minus the volume of each separate batch or truckload of gasoline labeled as oxygenated that is sold or dispensed for use in any non-control area.

(ii) Calculating the required total oxygen credit units. Multiply the total volume in gallons of gasoline labeled as oxygenated that is sold or dispensed for use in the control area, as determined by (i) above, by the oxygen content standard specified in R307-301-3(1).

(iii) Calculating the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of gasoline labeled as oxygenated that was sold or dispensed for use in the control area as determined by (i) above, multiplied by the actual oxygen content by weight percent associated with each batch or truckload. If a batch or truckload of gasoline is blended under the substantially similar provisions of 42 U.S.C. 7545(f)(1) or under a waiver granted by the Environmental Protection Agency under the provisions of 42 U.S.C. 7545(f)(4), any extra volume of oxygenate in excess of the substantially similar criteria including the blending tolerance of 0.2% oxygen by weight, or in excess of the appropriate waiver, cannot be included in the calculation of oxygen credit units.

(iv) Calculating the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by (iii) above;

(A) plus the total oxygen credit units purchased, acquired through trade and received; and

(B) minus the total oxygen credit units sold, given away and provided through trade.

(v) Comparing the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in R307-301-3 is met. If the adjusted actual total oxygen credit units is less than the required

total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(vi) In transferring oxygen credit units, the transferor shall provide the transferee with information as to how the credits were calculated, including the volume and oxygen content by weight percent of the gasoline associated with the credits.

(b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see (c) below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

(c) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(i) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(ii) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(iii) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(iv) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

(d) Credit transfers. Credits may be used in the compliance calculation in (2)(a)(i) above, provided that:

(i) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(ii) the credits are generated in the same averaging period as they are used;

(iii) the ownership of credits is transferred only between CARs or blender CARs registered under the averaging compliance option specified in R307-301-7;

(iv) the credit transfer agreement is made no later than 30 working days, as defined in R307-301-1, after the final day of the averaging period in which the credits are generated; and

(v) the credits are properly created.

(e) Improperly created credits.

(i) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(ii) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

(3) Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in R307-301-1 shall have an oxygen content of at least the average oxygen content standard specified in R307-301-3(1). The maximum oxygen content which may be used to calculate compliance is the average oxygen content standard specified in R307-301-3. In addition, the CAR or blender CAR is prohibited from selling, trading

or providing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

**R307-301-6. Minimum Oxygen Content.**

(1) Any gasoline which is sold or dispensed by a CAR, blender CAR, carrier, distributor, or reseller for use within a control area, as defined in R307-301-1, during the control period, shall contain not less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement shall begin five working days, as defined in R307-301-1, before the applicable control period and shall apply until the end of that period.

(2) This requirement shall apply to all parties downstream of the CAR or blender CAR unless the gasoline will be sold or dispensed to another CAR or blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area during a control period, as defined in R307-301-1, shall not contain less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1%. This requirement shall apply during the entire applicable control period.

(3) Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies described in R307-301-4. This determination shall include the oxygen content by weight percent, each type of oxygenate, and percent oxygenate by volume for each type of oxygenate.

(4) Any gasoline sold or dispensed by a CAR or blender CAR for use within a control area and for which compliance is demonstrated using the method specified in (3) shall contain not less than the average oxygen content standard specified in R307-301-3(1), unless the gasoline is sold or dispensed to another registered CAR or blender CAR.

**R307-301-7. Registration.**

(1) All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area during a control period, including CARs, blender CARs, carriers, resellers, and distributors, shall petition the director for registration not less than one calendar month in advance of such sales or transfers of gasoline into the control area during the control period.

(2) This petition for registration shall be on forms prescribed by the director and shall include the following information:

(a) the name and business address of the CAR, blender CAR, carrier, reseller, or distributor;

(b) in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

(c) in the case of a blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a blender CAR;

(d) in the case of a carrier, distributor, or reseller, the names and addresses of retailers they supply;

(e) the address and physical location where documents which are required to be retained by R307-301 shall be kept; and

(f) in the case of a CAR or blender CAR, the compliance option chosen under provisions of R307-301-5 and a list of oxygenates which will be used.

(3) If the registration information previously supplied by a registered party under the provisions of (2)(a) through (e) becomes incomplete or inaccurate, that party shall submit updated registration information to the director within 15 working days as defined in

R307-301-1. If the information required under (2)(f) is to change, the updated registration information must be submitted to the director before the change is made.

(4) No person shall participate in the oxygenated gasoline program as a CAR, blender CAR, carrier, reseller, or distributor until such person has been notified by the director that such person has been registered as a CAR, blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the director. The director shall issue each CAR, blender CAR, carrier, reseller, or distributor a unique identification number within one calendar month of the petition for registration.

**R307-301-8. Recordkeeping.**

(1) Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required:

(a) Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(i) results of the tests utilized to determine the types of oxygenates and percent by volume;

(ii) percent oxygenate content by volume of each oxygenate;

(iii) oxygen content by weight percent;

(iv) purity of each oxygenate;

(v) total volume of gasoline; and

(vi) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

(b) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck or terminal lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain a copy of the transfer document for each batch or truckload of gasoline received, purchased, sold or dispensed, and shall maintain records containing the following information:

(i) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(ii) volume of each batch or truckload of gasoline going into or out of the terminal;

(iii) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(iv) for each oxygenate, the type of oxygenate, purity if available, and percent oxygenate by volume;

(v) oxygen content by weight percent of all batches or truckloads received at the terminal;

(vi) destination county of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline, if the destination is within Utah or Weber County;

(vii) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer; and

(viii) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(c) CARs and blender CARs. Each CAR must maintain records containing the information listed in (b) above. Each CAR and blender CAR must maintain a copy of the transfer document for each shipment of gasoline received, purchased, sold or dispensed, as well as the records containing the following information:

~~(i) CAR or blender CAR identification number;~~  
~~(ii) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;~~  
~~(iii) data on each shipment of gasoline received, including:~~  
~~(A) the volume of each shipment;~~  
~~(B) type of oxygenate or oxygenates, and percentage by volume; and~~  
~~(C) oxygen content by weight percent;~~  
~~(iv) the volume of each receipt of bulk oxygenates;~~  
~~(v) the name and address of the parties from whom bulk oxygenate was received;~~  
~~(vi) the date and destination county of each sale of gasoline, if the destination is within Utah or Weber County;~~  
~~(vii) data on each shipment of gasoline sold or dispensed including:~~  
~~(A) the volume of each shipment;~~  
~~(B) type of each oxygenate, and percent by volume for each oxygenate, and~~  
~~(C) oxygen content by weight percent;~~  
~~(viii) documentation of the results of all tests done regarding the oxygen content of gasoline;~~  
~~(ix) the names, addresses and CAR or blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and~~  
~~(x) in the case of CARs or blender CARs that elect to comply with the average oxygen content standard specified in R307-301-3 by means of the compliance option specified in R307-301-5(2) must also maintain records containing the following information:~~  
~~(A) records supporting and demonstrating compliance with the averaging standard specified in R307-301-3; and~~  
~~(B) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or blender CAR identification numbers of the CARs and blender CARs involved in the individual transactions, and the amount of credits transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in R307-301-1, following the close of the averaging period must be included.~~  
~~(d) Retailers and wholesale purchaser consumers within a control area must maintain the following records:~~  
~~(i) the names, addresses and CAR, blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:~~  
~~(A) the transfer document as specified in R307-301-8(3) and~~  
~~(B) a copy of each contract for delivery of oxygenated gasoline and~~  
~~(ii) data on every shipment of gasoline bought, sold or transported, including:~~  
~~(A) volume of each shipment;~~  
~~(B) for each oxygenate, the type, percent by volume and purity (if available);~~  
~~(C) oxygen content by weight percent; and~~  
~~(D) destination county of each sale or shipment of gasoline, if the destination is within Utah or Weber County; and~~  
~~(iii) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.~~

~~(e) Carriers, distributors, resellers, terminal operators, and oxygenate blenders must keep a copy of the transfer document for each truckload or shipment of gasoline received, obtained, purchased, sold or dispensed.~~

#### **R307-301-9. Reports.**

~~(1) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 by the compliance option specified in R307-301-5(2) shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(2).~~

~~(2) Each CAR or blender CAR that elects to comply with the average oxygen content standard specified in R307-301-3 shall submit a report to the director for each control period for each control area as defined in R307-301-1 reflecting the compliance information detailed in R307-301-5(3), including the volume of oxygenated gasoline sold or dispensed into each control area during the control period.~~

~~(3) The report is due 30 working days, as defined in R307-301-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the director.~~

#### **R307-301-10. Transfer Documents.**

~~Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:~~

- ~~(1) the date of the transfer;~~
- ~~(2) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;~~
- ~~(3) the name, address, and CAR, blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;~~
- ~~(4) the volume of gasoline which is being transferred;~~
- ~~(5) identification of the gasoline as oxygenated or, if non-oxygenated, with a statement labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period";~~
- ~~(6) the location of the gasoline at the time of the transfer;~~
- ~~(7) type of each oxygenate and percentage by volume for each oxygenate;~~
- ~~(8) oxygen content by weight percent; and~~
- ~~(9) for gasoline which is in the gasoline distribution network between the refinery or import installation and the control area terminal, for each oxygenate used, the type of oxygenate, its purity and percentage by volume and the oxygen content by weight percent.~~

#### **R307-301-11. Prohibited Activities.**

~~(1) During the control period, no refiner, oxygenate blender, CAR, blender CAR, control area terminal operator, carrier,~~

distributor or reseller may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

~~(a) gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% oxygen, for use during the control period, in a control area unless clearly marked documents accompany the gasoline labeling it as "Non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period"; or~~

~~(b) gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.~~

~~(2) No retailer or wholesale purchaser consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% in a control area.~~

~~(3) No person may operate as a CAR or blender CAR or hold themselves out as such unless they have been properly registered by the director. No CAR or blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR or blender CAR for use in a control area, unless:~~

~~(a) the average oxygen content of the gasoline during the averaging period meets the standard established in R307-301-3; and~~

~~(b) the gasoline contains at least 2.0% oxygen by weight, or 2.6% oxygen by weight if the average oxygen content standard is 3.1% on a per gallon basis.~~

~~(4) For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:~~

~~(a) transfer documentation containing the information specified in R307-301-8(3) accompanies the gasoline and~~

~~(b) the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.~~

~~(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:~~

~~(a) the non-oxygenated gasoline is segregated from oxygenated gasoline;~~

~~(b) clearly marked documents accompany the non-oxygenated gasoline labeling it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period," and~~

~~(c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.~~

~~(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in R307-301-8 through 10.~~

~~(7) No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser consumer installation, without transfer documents which accurately contain the information required by R307-301-10).~~

~~(8) Liability for violations of the prohibited activities.~~

~~(a) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(a) or (2) above, the following persons shall be in violation:~~

~~(i) the retailer, wholesale purchaser consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases,~~

~~operates, controls or supervises the installation where the violation is found; and~~

~~(ii) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.~~

~~(b) Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in (1)(b) or (2) above, the following persons shall be in violation:~~

~~(i) the retailer, wholesale purchaser consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and~~

~~(ii) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.~~

~~(9) Defenses for prohibited activities.~~

~~(a) In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under (1) above, that person shall not be in violation if they can demonstrate that they meet all of the following:~~

~~(i) that the violation was not caused by the regulated party or its employee or agent;~~

~~(ii) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by R307-301-8; and~~

~~(iii) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in (10) below.~~

~~(b) In any case in which a retailer or wholesale purchaser consumer would be in violation under (2) above, the retailer or wholesale purchaser consumer shall not be in violation if it can demonstrate that they meet all of the following:~~

~~(i) that the violation was not caused by the regulated party or its employee or agent; and~~

~~(ii) that the retailer or wholesale purchaser consumer possess documents which should accompany the gasoline, which contain the information required by R307-301-8 through 10.~~

~~(c) Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by (a) above, that the violation was caused by any of the following:~~

~~(i) an act in violation of law (other than the Clean Air Act or R307-301), or an act of sabotage or vandalism, or~~

~~(ii) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser consumer which is supplied by any of the persons listed in (a) above, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or~~

~~(iii) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.~~

## NOTICES OF PROPOSED RULES

(d) In R307-301-8 through 11, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

(10) ~~Quality Assurance Program.~~ In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

### **R307-301-12. Labeling of Pumps.**

(1) Any person selling or dispensing oxygenated gasoline pursuant to R307-301 is required to label the fuel dispensing system with one of the following notices:

(a) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

(b) "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in concentrations of at least one percent) from November 1 through February 29."

(2) The label letters shall be block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

(3) The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

(4) The retailer or wholesale purchaser consumer shall be responsible for compliance with R307-301-12.

### **R307-301-13. Inspections.**

Inspections of registered parties, control area retailers, refineries, control area terminals, oxygenate blenders and control area wholesale purchaser consumers may include the following:

(1) physical sampling, testing, and calculation of oxygen content of the gasoline as specified in R307-301-4;

(2) review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in R307-301-8; and

(3) in the case of control area retailers and wholesale purchaser consumers, verification that gasoline dispensing pumps are labeled in accordance with R307-301-12.

### **R307-301-14. Public and Industry Education Program.**

The director shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

**KEY:** air pollution control, motor vehicles, gasoline, petroleum

**Date of Last Change:** May 18, 2004

**Notice of Continuation:** January 27, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-2-101; 19-2-104]

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Repeal

**Utah Admin. Code Ref (R no.):** R384-205

**Filing ID**  
54142

### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Health Promotion	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Teresa Brechlin	385-214-5933	tbrechlin@utah.gov
Anna Fondario	385-258-8537	afondario@utah.gov

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

### General Information

#### **2. Rule or section catchline:**

R384-205. Opiate Overdose Outreach Pilot Program

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

The agency is requesting to repeal this rule. The program was funded for one year. It no longer receives funds and is no longer active.

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

This rule is repealed in its entirety.

### Fiscal Information

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

##### **A) State budget:**

There is no fiscal impact to the state budget because the funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).



**B) Local governments:**

There is no fiscal impact to the local governments because the funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).

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

There is no fiscal impact to small business because the funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).

**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 funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).

**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 to persons other than small businesses, non-small businesses, state, or local government entities because the funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).

**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 funding for this program was one time funding and the program is no longer active. Please see Subsections 25-55-107(4-7).

**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 on business unless it was the recipient of a prior grant of funds that no longer exist. Nathan Checketts, Interim Executive Director

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0

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

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

The Executive Director of the Utah Department of Health, Nathan 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 55

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	11/21/2021
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### R384. Health, Disease Control and Prevention, Health Promotion.

#### ~~R384-205. Opiate Overdose Outreach Pilot Program.~~

##### ~~R384-205-1. Authority and Purpose.~~

~~This rule establishes procedures and application processes pursuant to Title 26 Chapter 55 Opiate Overdose Response Act for the Utah Department of Health. Funding will provide for the purchase of an opiate antagonist; and/or for the cost of training on the proper administration of an opiate antagonist, in response to an opiate-related drug overdose event.~~

##### ~~R384-205-2. Definitions.~~

- ~~(1) The following definitions apply to this rule:~~
- ~~(a) "Department" means the Utah Department of Health Violence and Injury Prevention Program.~~
- ~~(b) "Harm Reduction" means services that are aimed at reducing negative consequences associated with drug use.~~
- ~~(c) "High risk populations" means tribal communities, rural communities, geographic areas and/or populations with significantly high rates of opioid abuse, misuse, or overdose.~~
- ~~(d) "Opiate antagonist" is as defined in Subsection 26-55-102(8).~~

##### ~~R384-205-3. Application Process.~~

~~(1) The Department will establish an Opiate Overdose Outreach grant application process and packet on an annual basis, as funding is available. The packet will include the review schedule, submission details, review criteria and eligibility details. The application packet with all details will be posted on the Utah Department of Health Violence and Injury Prevention Program website.~~

##### ~~R384-205-4. Criteria for Application for the Opiate Overdose Outreach Pilot Program.~~

- ~~(1) Eligible applicants may include organizations as defined in Subsection 26-55-107(1) which includes organizations that provide harm reduction services, and an overdose outreach provider as defined in Subsection 26-55-102(10)(e),(f)and(g).~~
- ~~(2) Additional weight for awarding a grant will be given based on applicant's ability to demonstrate:~~
- ~~(a) how they will serve high risk populations and~~
- ~~(b) size of population served.~~

##### ~~R384-205-5. Criteria for Funding Allocation.~~

- ~~(1) The Department shall select a grant allocation committee. The committee will include five professionals from one or more of the following professions:~~
- ~~(a) health care,~~
- ~~(b) pharmacy,~~
- ~~(c) public health, and~~
- ~~(d) emergency medical services.~~
- ~~(2) The committee will review the applications and assign a score based on the following evaluation criteria of the application:~~
- ~~(a) Demonstrated burden and identified target audience,~~
- ~~(b) Capacity to reach target audience,~~

- ~~(c) Ability to operate under deadline, and~~
- ~~(d) Detailed budget breakdown.~~
- ~~(3) Allocation of funding for each application will be based upon the criteria outlined in the Scope of Services and Requirements section of the grant application.~~
- ~~(4) Applicant's funding request shall meet the criteria stated in Subsection 26-55-107(7)(b)(ii) as it relates to training costs.~~
- ~~(5) Funding will be allocated according to applicant scores.~~

##### ~~R384-205-6. Report Requirements.~~

~~The grantee shall submit an annual report to the Department in accordance to Subsection 26-55-107(7)(d).~~

##### ~~R384-205-7. Audit Provisions.~~

~~The grantee shall record, preserve, and make data available for audit by the Department. The retention schedule shall be according to that specified in the application packet when applying for funding.~~

**KEY: opioids, naloxone, overdoses, prescription drugs**

**Date of Last Change: November 7, 2016**

**Authorizing, and Implemented or Interpreted Law: 26-55-107]**

### NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R386-703	Filing ID	54145
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### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Epidemiology	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mark Jones	801-538-6191	markejones@utah.gov

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

### General Information

<b>2. Rule or section catchline:</b>
R386-703. Injury Reporting Rule
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Utah Administrative Rulewriting Manual. As required, the amendments to Rule R386-703 provide technical and conforming changes in accordance with Manual.

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

Technical and conforming amendments were made to all sections of this rule to align with the Utah Administrative Rulewriting Manual and remove superfluous and repetitive language, including the following:

In Section R386-703-2, definitions for technical terms that were defined in the body of the rule were moved to the definitions section.

In Section R386-703-3, the list of reportable injuries was simplified due to the removal of definitions.

Section R386-703-4 was broken into separate sections for their respective reporting requirements. This created a new Section R386-703-5, a new Section R386-703-6, and a new Section R386-703-7.

**Fiscal Information**

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

**A) State budget:**

No anticipated cost or savings because the changes do not affect existing operations.

**B) Local governments:**

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

**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 businesses because it does not add any additional requirements or obligations.  
Nathan Checketts, Interim Executive Director

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

**Regulatory Impact Table**

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

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

The Interim Executive Director of the Department of Health, Nathan 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 26-1-30	Section 26-6-3	
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	01/14/2022
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<b>10. This rule change MAY become effective on:</b>	01/22/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	11/21/2021
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**R386. Health, Disease Control and Prevention, Epidemiology. R386-703. Injury Reporting Rule.****R386-703-1. Purpose Statement.**

(1) The Injury Reporting Rule is adopted under authority of Sections 26-1-30 and 26-6-3.

(2) The Injury Reporting Rule establishes an injury surveillance and reporting system for ~~major injuries occurring in Utah. Injuries constitute a leading cause of death and disability in Utah and, therefore, pose an important risk to public health.~~ specified injuries with the intent of identifying the risk factors that contribute to the causes of injury that can be ameliorated, thereby reducing morbidity and mortality.

~~[(3) Rule R386-703 is adopted with the intent of identifying causes of major injury which can be reduced or eliminated, thereby reducing morbidity and mortality.]~~

**R386-703-2. Definitions.**

(1) "Acute Traumatic Brain Injury" means a head injury of sufficient severity to cause death or to require admission to a health care facility. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction and may be

diagnosed as brain concussions, brain contusions, or traumatic intracranial hemorrhages.

(2) "Acute Spinal Cord Injury" means a traumatic injury to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require health care facility admission.

(3) "Agency" means the health care facility or laboratory at which a reportable injury is treated or evaluated.

(4) "Asphyxiation" means an injury which arises from atmospheric oxygen deprivation or from traumatic respiratory obstruction which results in death or is of sufficient severity to require admission to a health care facility.

(5) "Authorized Health Personnel" means a person representing the Department or a local health department who is authorized to inspect medical records for injury investigations.

(6) "Blunt Force Injury" means a blunt force injury which results in death or is of sufficient severity to require admission to a health care facility.

(7) "Bureau of Emergency Medical Services" means the Bureau of Emergency Medical Services in the Division of Family Health and Preparedness in the Utah Department of Health.

(8) "Bureau of Epidemiology" means the Bureau of Epidemiology in the Division of Disease Control and Prevention in the Utah Department of Health.

(9) "Burns" means an injury resulting from acute thermal exposure or exposure to fire which results in death or is of sufficient severity to require admission to a health care facility.

(10) "Chemical Poisoning" means any case where a person has an acute exposure to toxic chemical substances which result in death or require admission to a health care facility or emergency department evaluation.

(11) "Department" means the Utah Department of Health.

(12) "Drowning" and "Near Drowning" means a water immersion injury resulting in death and any water immersion injury of sufficient severity to require admission to a health care facility.

(13) "Electrocution" means an injury arising from exposure to electricity which results in death or is of sufficient severity to require admission to a health care facility.

(14) "Elevated Blood Lead" means any case where a person has a blood lead concentration equal to or greater than 5 micrograms per deciliter.

(15) "Health Care Facility" means the same as in Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(16) "Individual" means the medical examiner, head start coordinator, or licensed medical personnel of a private office who treated or evaluated a reportable injury.

~~[(17) "Injury" [is defined as] means bodily damage resulting from exposure to physical agents [such as] including mechanical energy, thermal energy, ionizing radiation, or chemicals, or resulting from the deprivation of basic environmental requirements [such as] including oxygen or heat. [Mechanical energy injuries include acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.]~~

(18) "Injury Related to Substance Abuse" means any case of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.

(19) "Intentional Injuries" means any case of suicide or attempted suicide resulting in admission to a health care facility or any case of homicide, attempted homicide, or battery resulting in hospitalization.

([2]20) "Laboratory" is defined as any clinical laboratory, physician office, ~~[hospital]~~health care facility, health clinic, reference laboratory or any facility that performs blood lead analysis.

(21) "Local health department" has the same meaning as defined in Section 26A-1-102.

(22) "Local health officer" means the executive director of the jurisdictional local health department or a designated representative.

(23) "Mechanical Energy Injuries" means acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.

(24) "Office of Vital Records and Statistics" means the Office of Vital Records and Statistics in the Center for Health Data and Informatics in the Utah Department of Health.

(25) "Traumatic Amputations" means a traumatic amputation of a limb or part of a limb which results in death or which require admission to a health care facility or emergency department treatment.

### **R386-703-3. Reportable Injuries.**

([3]1) ~~[The Utah Department of Health declares the following injuries to be of concern to the public's health. Each case shall be reported to the Utah Department of Health as described in R386-703-4.]~~An individual or agency shall report the following to the Department as outlined in Section R386-703-4:

~~\_\_\_\_\_ (a) Acute traumatic brain injury. Reportable acute traumatic brain injuries include head injuries of sufficient severity to cause death or to require admission to a hospital. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction, and may be diagnosed as brain contusions, brain contusions, or traumatic intracranial hemorrhages.~~

~~\_\_\_\_\_ (b) Acute spinal cord injury. Reportable acute spinal cord injuries include traumatic injuries to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (c) Blunt force injury. Reportable injuries include all blunt force injuries which result in death or which are of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (d) Drowning and near drowning. Reportable drownings and near drownings include all water immersion injuries resulting in death and other water immersion injuries of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (e) Asphyxiation. Reportable asphyxiations include injuries which arise from atmospheric oxygen deprivation or from traumatic respiratory obstruction which result in death or which are of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (f) Burns. Reportable burn injuries include injuries resulting from acute thermal exposure or exposure to fire which result in death or which are of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (g) Electrocutation. Reportable electrocution injuries include injuries arising from exposure to electricity which result in death or which are of sufficient severity to require hospital admission.~~

~~\_\_\_\_\_ (h) Blood Lead. All blood lead test results are reportable. Cases of elevated blood lead levels include all persons with blood lead concentrations equal to or greater than 5 micrograms per deciliter. All cases shall be confirmed by either a venous or capillary blood sample, if the first sample was a capillary blood sample.~~

~~\_\_\_\_\_ (i) Chemical Poisoning. Reportable cases of chemical poisoning include all persons with acute exposure to toxic chemical substances which result in death or which require hospital admission or hospital emergency department evaluation. Unintentional adverse~~

~~health effects resulting from the use of pharmacological agents as prescribed by physicians do not require reporting under this rule.~~

~~\_\_\_\_\_ (j) Intentional Injuries. Reportable intentional injuries include all cases of suicide or attempted suicide resulting in hospital admission and all cases of homicide, attempted homicide, or battery resulting in hospitalization.~~

~~\_\_\_\_\_ (k) Injuries Related to Substance Abuse. Reportable injuries include all cases of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.~~

~~\_\_\_\_\_ (l) Traumatic Amputations. Reportable amputations include traumatic amputations of a limb or part of a limb which result in death or which require hospital admission or hospital emergency department treatment. Only amputations resulting in bone loss shall be reported.]~~

~~\_\_\_\_\_ (a) chemical poisoning, except unintentional adverse health effects resulting from the use of pharmacological agents as prescribed by a physician do not require reporting under this rule;~~

~~\_\_\_\_\_ (b) acute traumatic brain injury;~~

~~\_\_\_\_\_ (c) acute spinal cord injury;~~

~~\_\_\_\_\_ (d) blunt force injury;~~

~~\_\_\_\_\_ (e) drowning and near drowning;~~

~~\_\_\_\_\_ (f) asphyxiation;~~

~~\_\_\_\_\_ (g) burns;~~

~~\_\_\_\_\_ (h) electrocution;~~

~~\_\_\_\_\_ (i) intentional injuries;~~

~~\_\_\_\_\_ (j) injuries related to substance abuse;~~

~~\_\_\_\_\_ (k) traumatic amputation; and~~

~~\_\_\_\_\_ (l) each blood lead test result.~~

~~\_\_\_\_\_ (2) In the case of an elevated blood lead test result, if the initial test result was from a capillary blood sample the attending individual or agency shall confirm each case of elevated blood lead by either a venous or capillary blood sample.~~

### **R386-703-4. [Report Requirements.]Report Requirements: Blood Lead Testing Results.**

~~\_\_\_\_\_ (1) [Reporting blood lead testing results.~~

~~\_\_\_\_\_ (a) Non Case Report Contents. Unless otherwise specified, each blood lead result.]When reporting a non-case blood lead result, the individual or agency taking the sample shall provide [at minimum]the following information for the person being tested:[ name, date of birth or age if date of birth is unknown, sex, zip code, and the individual or agency submitting the report.]~~

~~\_\_\_\_\_ (a) name;~~

~~\_\_\_\_\_ (b) date of birth or age if date of birth is unknown;~~

~~\_\_\_\_\_ (c) sex;~~

~~\_\_\_\_\_ (d) zip code; and~~

~~\_\_\_\_\_ (e) the individual or agency submitting the report.~~

~~\_\_\_\_\_ ([b]2) [Case Report Contents. Unless otherwise specified, each injury report.]When reporting a case of elevated blood lead the individual or agency taking the sample shall provide the following information with each injury report pertaining to the injured person:[ name, date of birth or age if date of birth is unknown, sex, address of residence, date of injury, type of injury, external cause of injury, locale of injury, intentionality, relation of injury to occupation, disposition of the injured person, and the individual or agency submitting the report. A standard report format has been adopted and shall be supplied to reporting sources by the Department of Health upon request.]~~

~~\_\_\_\_\_ (a) name;~~

~~\_\_\_\_\_ (b) date of birth or age if date of birth is unknown;~~

~~\_\_\_\_\_ (c) sex;~~

(d) address of residence;  
(e) date of injury;  
(f) type of injury;  
(g) external cause of injury;  
(h) locale of injury;  
(i) intentionality;  
(j) relation of injury to occupation;  
(k) disposition of the injured person; and  
(l) the name of the individual or agency submitting the report.

(3) The Department shall adopt a standard report format which may be supplied to reporting sources upon request.

**R386-703-5. Report Requirements: Agencies or Individuals Required to Report Injuries.**

[(2) Agencies or Individuals Required to Report Injuries. A reportable injury evaluated or treated at a hospital shall be reported by that hospital. Reportable injuries not evaluated at a hospital shall be reported by the involved physician, nurse, other health care practitioner, medical examiner, head start health coordinator or laboratory administrator.] Each individual or agency treating or evaluating a reportable injury shall report the injury as required in Sections R386-703-3 through R386-703-7.

**R386-702-6. Report Requirements: Time Requirements.**

[(3) Time Requirements. Persons] An individual or agency required to report a reportable injury shall submit [their] the report[s] [to the local health department or the Utah Department of Health] within 60 days of the time of diagnosis or recognition of injury. In the event of an unusual or excessive occurrence of injuries [which may arise from a continuing or immediate threat to the public's health, persons] an individual or agency required to report shall immediately report by telephone to the local health officer or to the Utah Department of Health.

**R386-703-7. Report Requirements: Report Destinations.**

[(4)1] [Case Report Destinations. Each case of injury shall be reported.] Except in (a), (b), and (c), an individual or agency shall report a reportable injury to the Bureau of Epidemiology [Utah Department of Health] or to the local health department responsible for the geographic area where the injury occurred.

[— (a) The local health officer shall forward all original reports to the Utah Department of Health. Local health departments may maintain copies of these reports.

— (b) Except as noted in R386-703-4(4)(c), (d) and (e), case reports shall be sent to the Bureau of Epidemiology of the Utah Department of Health.]

[(e)1a] [In fatal cases] When a case results in death, [submission of completed death certificates to the Bureau of Vital Records fulfills reporting requirements.] an individual or agency reporting a reportable injury may submit a completed death certificate to the Office of Vital Records and Statistics in lieu of reporting to the Bureau of Epidemiology.

[(d)1b] In the case[s] where an injury is evaluated in [hospital emergency departments] an emergency department of a health care facility, [submission of properly completed hospital emergency department logs to the Bureau of Emergency Medical Services will fulfill reporting requirements, provided that the records are submitted through an electronic medium in a computer database format acceptable to the Bureau of Emergency Medical Services.] the health care facility may, in lieu of reporting to the Bureau of Epidemiology, submit a complete emergency department log to the

Bureau of Emergency Medical Services if the records are submitted through an electronic medium and format acceptable to the Bureau of Emergency Medical Services.

[(e)1c] In the case[s] where a reportable [injuries] injury listed in Section R386-703-3 [are] is reported under the requirements of the Utah Health Data Authority Act, 26-33a [the data supplier may notify the Utah Department of Health in writing that information relating to individuals with a reportable injury will be supplied to the Bureau of Epidemiology before the identifying information is removed from the data file. Any data provided in this manner fulfills reporting requirements. If permission is not granted by the data supplier, duplicate reporting is required.], the individual or agency may:

(i) grant permission to the Department in writing that information relating to a case with a reportable injury may be supplied to the Bureau of Epidemiology before the identifying information is removed from the report; or

(ii) report the injury both in accordance with the Utah Health Data Authority Act, 26-33a, and to the Bureau of Epidemiology.

(2) The local health officer shall forward each original report to the Bureau of Epidemiology. The local health department may maintain copies of these reports.

**R386-703-[5]8. Special Investigations of Injury.**

(1) The [Utah Department of Health] Department and local health [departments] officer may conduct epidemiologic investigations [of injury occurrence. The Utah Department of Health and local health departments may collect] including the collection of additional information pertaining to risk factors, medical condition, and circumstances of an injury.

(2) [Hospitals and other health care providers] A individual or agency required to submit reports in Section R386-703(5) shall, upon request by the Department and the local health officer, provide authorized health personnel the [occasion] authority to inspect medical records of reportable injuries.

(3) The Utah Department of Transportation, Utah Industrial Commission, Utah Department of Public Safety, and local public safety agencies shall make available to authorized health personnel information on reportable injuries.

**R386-703-[6]2. Confidentiality of Reports.**

[(4) All] Each report[s] [herein] required in Section R386-703-3 [are] is confidential and [are] is not open to public inspection. The Department shall maintain the confidentiality of personal information obtained under this rule [shall be maintained] according to [the provisions of] Sections 26-6-27 through 26-6-30. Nothing in this rule [however] precludes the discussion of case information with the attending [physician or public health workers] individual, agency, or authorized health personnel.

**R386-703-[7]10. Penalties.**

[(4) —] Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including [this Injury Reporting Rule] Rule R386-703, are prescribed under Sections 26-23-3 through 26-23-6.

**KEY: [rules and procedures, injuries] report, injury, blood lead**  
**Date of Last Change: 2022[August 23, 2017]**  
**Notice of Continuation: July 31, 2020**  
**Authorizing, and Implemented or Interpreted Law: 26-1-30**

**NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R392-300</b>	<b>Filing ID</b> <b>54166</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health, Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142101	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R392-300. Recreation Camp Sanitation
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Administrative Rulewriting Manual. As required, the amendments to Rule R392-300 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Technical and conforming amendments were made to all sections of this rule to align with the Rulewriting Manual for Utah and remove superfluous and repetitive language, including the following:
Tables 1, 2, and 3 were reformatted.
A new Section R392-300-16 was added to include a severability clause.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

No anticipated cost or savings because the changes do not affect existing operations.

**B) Local governments:**

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

**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 on business because the changes do not affect existing business operations.  
Nathan Checketts, Interim Executive Director

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

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

## NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Interim Executive Director of the Department of Health, Nathan Checketts, has reviewed and approved this fiscal analysis.			

## Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26-1-5	Section 26-15-2	Subsection 26-1-30(23)

## Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	01/14/2021
<b>10. This rule change MAY become effective on:</b>	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of	

Administrative Rules on or before the date designated in Box 10.

## Agency Authorization Information

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	12/01/2021
--	--	--------------	------------

**R392. Health, Disease Control and Prevention, Environmental Services.**
**R392-300. Recreation Camp Sanitation.**
**R392-300-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, ~~26-1-30(23), and 26-15-2, and Subsection 26-1-30(23).~~

(2) This rule establishes definitions; sets standards for health, safety, and welfare of individuals and for the prevention of the spread of disease in or from a recreational camp.

**R392-300-2. Applicability.**

~~This~~(1) Except as provided in Subsection (2), this rule applies to any person who owns or operates a camp in Utah, unless specifically exempted. This rule applies to the repair, maintenance, use, operation, and occupancy of any camp[s] or campsite[s] designed, intended for use, or otherwise used for temporary human habitation in Utah. This rule does not apply to primitive or back-country camping.

(2) This rule does not apply to primitive or back-country camping.

**R392-300-3. Definitions.**

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Camp" means any day-use area, primitive camp, modern camp, semi-developed, or semi-primitive campground.

(2) "Day-use area" means an area in which human occupation is limited specifically to day[-]use, and does not include overnight sleeping accommodations. A day-use area may include including any parcel or tract of land designated as a recreation park, picnic ground[s], or recreational area located within the confines of an organized recreation camp.

(3) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative, executive director of the jurisdictional local health department or a designated representative.

(4) "Modern camp" means a campground of two or more campsites accessible by any type of vehicular traffic, and having permanent buildings for sleeping, a potable water supply under pressure, and food service facilities. Modern camps may be operated on a seasonal or short-term basis, and may include privately owned campgrounds such as youth camps, boy or girl scout camps, mixed-age group camps, summer camps, athletic camps, family group camps, or camps that are operated and maintained under the guidance, supervision or auspices of religious, public and private educational, and community service organizations.

(5) "Operator" means a person with ownership or overall responsibility for managing or operating a camp in the State of Utah.

(6) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(7) "Primitive" or "Back-country" means camping in a completely naturalized wilderness location that is in no way



preconditioned for camping, and where no services or amenities are provided to the camper.

(8) "Service building" means a permanent structure located within a camp that contains toilet, hand sink, or bathing facilities for use by recreation camp occupants.

(9) "Semi-developed" means a campground of two or more campsites where potable water services are made available. These campsites are accessible by any type of vehicular traffic and are not furnished with permanent sleeping or culinary buildings. Roads, trails, and campsites are defined, and basic facilities such as ~~(4)~~toilets or privies, tables, fire pits or tent pads~~(3)~~ are provided. These camps include state forest campgrounds, privately owned campgrounds, and youth camps.

(10) "Semi-primitive" means a campground where potable water services are not available. Rudimentary facilities including vault privies or earthen pit privies and fire pits are present.

(11) "Wastewater" means a discharge~~(s)~~ from ~~(all)~~a plumbing facility~~(ies)~~, including~~(-)~~ a rest room~~(s)~~, or kitchen~~(-and)~~ or laundry fixture~~(s)~~ either separately or in combination.

#### **R392-300-4. General.**

(1) This rule does not require a construction change in any portion of a camp if the camp was in compliance with the law in effect ~~(at the time) when~~ the camp was constructed~~(-except as in R392-300-4(1)(a))~~.

~~(a) The~~, except the local health officer may require construction changes if it is determined the camp or portion thereof is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health, or property.

(2) The operator shall ~~(carry out the provisions of)~~ensure compliance with this rule.

~~(3) Severability. If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other person or circumstances, and the remainder of this code, shall not be affected thereby.~~

~~(4)(3)~~ The operator shall comply with ~~(all)~~applicable building, zoning, electrical, ~~(health)~~and fire codes, and ~~(all)~~local ordinances.

~~(5)(4)~~ Campsites, including day-use areas, shall be constructed to provide adequate surface drainage, and shall be isolated from any existing or potential public health hazard or nuisance.

#### **R392-300-5. Water Supply.**

(1) ~~(Potable)~~Each potable water supply system~~(s)~~ for use by ~~(public lodging)camp~~ occupants shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) ~~(4)~~the Utah Department of Environmental Quality, Division of Drinking Water under Title R309 Drinking Water; and

(c) local health department regulations.

(2)(a) The operator shall ensure that each day-use area and modern or semi-developed camp is provided with potable water.

~~(a)(b)~~ Where individual water connections are not provided to camp sites, common-use water faucets shall be accessible to camp occupants, and located not more than 300 feet from any camp site.

~~(b)(c)~~ A threaded spigot is prohibited on any water faucet providing potable water to a camp.

~~(e)(d)~~ The operator shall ensure that the area immediately around a water faucet ~~(i.e. spigot)~~or spigot is designed to promote surface drainage by using a constructed drain system such as a gravel pit, subsurface drywell, French drain, or seepage trench. The operator

shall prevent water in this area from flowing into traffic areas and surface waters, or from pooling, standing, or becoming stagnant.

(3) The operator may be required to sample any water system~~(s)~~ operated on a seasonal basis for bacteriologic analysis, as determined by the local health officer.

(4) When a semi-primitive camp is provided with potable water, the operator shall comply with ~~(all)~~the requirements of ~~(R392-300-5)~~this section.

#### **R392-300-6. Wastewater Disposal Requirements.**

(1)(a) The operator shall make sewer service available to any modern camp or semi-developed camp.

~~(2)(b)~~ Sewer systems for use by camp occupants shall be designed, installed, and operated according to the requirements set forth by:

~~(a)(i)~~ Plumbing Code;

~~(b)(ii)~~ ~~(The)~~the Utah Department of Environmental Quality, Division of Water Quality under Title R317, Water Quality; and

~~(e)(iii)~~ local health department regulations.

~~(3)(c)~~ ~~(All w)~~Wastewater shall be discharged to a public sanitary sewer system when~~(ever)~~ practicable.~~(a)~~

~~(a)~~ Where connection to a public sewer is not practicable, wastewater shall be discharged into an approved wastewater disposal system meeting the requirements of Title R317, ~~(Environmental Quality)~~ Water Quality, and local health department regulations.

~~(b)(d)~~ Before commencing construction or alteration, ~~(The)~~the operator shall submit to the local health department~~(-all)~~ required plans for the construction or alteration of a wastewater disposal system in accordance with Title R317, Water Quality~~(-prior to commencing construction or alteration)~~.

~~(4)(c)~~ Sanitary vault privies or earthen pit privies shall be located, constructed, and maintained according to the requirements of Rule R317-560 and local health department regulation in such a manner that:

~~(a)(i)~~ users do not contact waste matter deposited;

~~(b)(ii)~~ access to the privy interior or vault is minimized for flies, insects, rats, and other animals;

~~(e)(iii)~~ surface or ground water cannot enter the vault or pit, either as runoff or as flood water;

~~(d)(iv)~~ the waste material in the privy cannot contaminate a water supply, stream, or body of water; and

~~(e)(v)~~ odors are minimized both inside and outside the privy structure.

~~(5)(2)~~ The operator shall take measures to ensure that campers do not defecate or urinate or otherwise dispose of human waste except at designated privies or toilet facilities.

#### **R392-300-7. Required Plumbing - Modern Camps.**

(1)(a) The operator shall ensure that (The)the minimum number of plumbing fixtures(-to be provided for modern camps) are provided to each modern camp in a service building according to Table 1.

(b) Where a camp is not used exclusively by one gender, the number of fixtures shall be based on 50%(-percent) of the total number of occupants being male and 50%(-percent) being female(-except where the camp is used exclusively by one gender, and shall be calculated from Table 1).

~~(a)(2)~~ Showers and sinks shall be provided with hot and cold potable water.

[

# NOTICES OF PROPOSED RULES

TABLE I  
Required Minimum Plumbing Fixtures For Modern Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures For Number of Camp Occupants		
	Males	Females	Both Sexes
Toilets	1:40*	1:25*	
Sinks	1:35*	1:35*	
Showers	1:35*	1:35*	
Drinking Fountains			1:300*
Service Sink			1 per service building
Potable Water Faucet			1 per service building

\*Or fraction thereof]

([2]3) [S]A sink[s] shall be located either in the same room as each toilet[s], or immediately adjacent to the service building.

([3]4) [U]For any toilet room intended to be used by males only, a urinal[s] may be substituted for a toilet for up to half of the required number of toilets [for males, provided]as long as the urinal is installed [in addition to a toilet at ]in the same location as the toilets.

([4]5) A[S]service building[s] shall be located not less than 15 feet and not more than 300 feet from any living and camping space[s] served, unless integrated into a permanent building at a modern camp.

([5]6) Soap and toilet tissue in a suitable dispenser[s], and a waste receptacle[s] with a lid[s] shall be provided in each service building.

([6]7) Clean individual disposable towels, or other alternate hand drying method approved by the local health officer, shall be provided at each sink.[-Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.]

([7]8) The operator shall [maintain]ensure that each service building is maintained in a clean and sanitary condition.

TABLE 1 Required Minimum Plumbing Fixtures for Modern Camps			
Plumbing Fixtures	Ratio of Plumbing Fixtures for Number of Camp Occupants *or fraction thereof		
	Males	Females	Both Genders
Toilets	1:40*	1:25*	--
Sinks	1:35*	1:35*	--
Showers	1:35*	1:35*	--
Drinking Fountains	--	--	1:300
Service Sink	--	--	1 per service building
Potable Water Faucet	--	--	1 per service building

## R392-300-8. Required Plumbing -- Semi-Developed Camps.

([1]-]The operator shall ensure that [For semi-developed camps,]the minimum number of plumbing fixtures at any semi-developed camp [to be]are provided [shall be-]based on the number of sites, according to Table [H]2.

[-(a) The operator shall calculate the minimum required number of fixtures according to Table II.

TABLE II  
Required Minimum Plumbing Fixtures for Semi-Developed Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Camp Sites
Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

\*Or fraction thereof]

TABLE 2  
Required Minimum Plumbing Fixtures for Semi-Developed Camps

Plumbing Fixtures	Ratio of Plumbing Fixtures per Number of Camp Sites *or fraction thereof
Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

## R392-300-9. Required Plumbing -- Day[-]Use Areas.

The operator shall ensure that the minimum number of plumbing fixtures at any day-use area [to be]are provided[-for day use areas shall be calculated from ] according to Table [H]3.

[TABLE III  
Required Minimum Plumbing Fixtures for Day-Use Areas

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Day-Use Sites
-------------------	---

Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

\*Or fraction thereof]

TABLE 3  
Required Minimum Plumbing Fixtures for Day-Use Areas

Plumbing Fixtures	Ratio of Plumbing Fixtures Per Number of Day-Use Sites *or fraction thereof
Toilets or vault privies	1:15*
Potable Water Faucet	1:15*

## R392-300-10. Operation and Maintenance.

(1) When tents, or permanent or semi-permanent buildings are provided by the operator, they shall:

- be of sound construction;
- assure adequate protection against the weather;
- include essential facilities to permit maintenance in a clean and operable condition;
- include openable windows or mechanical ventilation; and
- provide adequate storage for personal belongings.

(2)(a) Except when using double stacked bunks, [H]in open bay type sleeping areas containing four or more beds, the operator shall separate beds by a horizontal distance of at least five feet, reducible to three feet if beds are alternated head to foot, [except in the case of double stacked bunks, which-].

(b) Notwithstanding Subsection (2)(c), double stacked bunks shall have a minimum horizontal separation of six feet[-under all circumstances-].

(c) If partitions are utilized to preclude face-to-face exposure between beds, spacing requirements may be modified to a minimum separation distance of three feet between adjacent beds upon approval of the local health officer.

(3)(a) [Each provided]The operator shall ensure that each bed, bunk, or cot [shall be]is maintained in a sanitary condition.

(b) [M]Each mattress[es], mattress cover[s], quilt[s], blanket[s], pillow[s], pillowcase[s], sheet[s], bedcover[s], and other bedding shall be kept clean and in good repair.

(c) A sheet shall be provided for each bed, and shall be large enough to cover the top and [all four sides]each side of the mattress.

(d) A pillowcase shall be provided for each supplied pillow.

(e) Supplied bedding shall be replaced with clean linen, including sheets and pillowcases, before new occupant use.

(4) ~~[All]~~The operator shall ensure that each building[s], room[s], ~~[and]~~equipment,~~[including], and furnishing[s and equipment]~~ provided in a camping area[s], and the grounds surrounding them ~~[shall be]~~is maintained in a clean and operable condition.

(5) Where electric power is available, each service building[s] shall be provided with outside lighting to ~~[indicate]~~show the location ~~[and entrance doorways of each]~~of each entrance.

(6)(a) ~~[Where necessary, all]~~The operator shall use reasonable means ~~[shall be employed]~~to eliminate or control infestations of vermin, vectors, or pests within ~~[all parts of any]~~each camp.

(b) ~~[This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.]~~The operator shall use, on each outside opening of a structure intended for occupancy or food service, a screen to prevent ingress by vermin, vectors, and pests, or another method of control of outside openings approved by the local health officer.

(7) Each modern camp shall be equipped with at least a 24-unit ANSI compliant first aid kit~~[-The operator shall ensure that each first aid kit is]~~ that is:

- (a) properly stocked;
- (b) readily accessible; and
- (c) conveniently located in critical areas.

(8) The operator of a camp with onsite staff shall employ at least one individual who is ~~[adequately]~~trained to ~~[render]~~give first aid~~[-This individual should]~~ and who possesses at least a certificate of completion of the Basic First Aid Course as presented by the American National Red Cross or its equivalent.

#### **R392-300-11. Food Service.**

~~[When]~~The operator shall ensure that when food service is provided for camp occupants, food service, storage, and food preparation ~~[shall comply]~~complies with the FDA Model Food Code as incorporated and amended in Rule R392-100, Food Service Sanitation, and local health department regulations.

#### **R392-300-12. Solid Wastes.**

The operator shall ensure that:

(1) ~~[The operator shall provide]~~adequate containers are provided to prevent the accumulation of solid waste in the camp~~[-];~~

(2) ~~[S]~~solid waste generated at a camp or picnic area ~~[shall be]~~is stored in a leak-proof, non-absorbent container~~[-which shall be]~~ that is kept covered with a tight-fitting lid~~[-]; and~~

(3) ~~[All]~~solid waste[s] ~~[shall be]~~is disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or a public health nuisance.

#### **R392-300-13. Swimming Pool.**

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools as well as other local health department regulations for ~~[all]~~each pool[s] or spa[s] made available to camp occupants or staff.

#### **R392-300-14. Inspections and Investigations.**

(1)(a) ~~[Upon]~~Except as in Subsection (1)(b), and upon presenting proper identification, the operator shall permit a local health officer to enter upon the premises of a camp to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with ~~[Rule R392-300]~~this rule.

(b)2 The local health officer may not enter an occupied tent or other structure designed or intended for temporary human habitation without the express permission of the occupant except:

(a) when a warrant is issued to a ~~[duly]~~authorized public safety officer which authorizes the local health officer to enter~~[-];~~ or

(b) when the operator and the local health officer determine that there exists an imminent risk to the life, health, or safety of the occupant.

#### **R392-300-15. Closing or Restricting of Camps or Sites.**

(1) ~~[If a local health officer deems a camp, campsite, or portion thereof to be an imminent risk to the life, health, or safety of the public, the area may be closed or its use may be restricted, as determined by the local health officer.]~~A local health officer may close or restrict the use of any camp, campsite, or portion thereof if it poses an imminent risk to the life, health, or safety of the public.

(2) Within a reasonable time as ordered by the local health officer, the operator shall restrict public access to the impacted area of any camp, campsite, or portion thereof that has been closed or restricted to use by a local health officer.

(3) ~~[It shall be unlawful for an operator to.]~~The operator may not allow any person to occupy a camp or campsite that has been deemed unfit for human habitation until written approval of the local health officer is given.

#### **R392-300-16. Severability.**

If any provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

**KEY:** camp, campground, public health, recreation areas

**Date of Last Change:** 2022~~[March 26, 2018]~~

**Notice of Continuation:** October 21, 2021

**Authorizing, and Implemented or Interpreted Law:** 26-15-2, 26-1-30(23); 26-15-2

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R392-400</b>	<b>Filing ID</b> <b>54143</b>
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#### **Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R392-400. Temporary Mass Gatherings Sanitation

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

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Administrative Rulewriting Manual for Utah. As required, the amendments to Rule R392-400 simplify this rule, remove outdated language and redundancies, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

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

The amendments to Rule R392-400 provide technical and conforming changes throughout the rule and remove unnecessary and repetitive language.

Section R392-400-1 is a new section added to specify the statute under which this rule is authorized, and to explain the purpose of this rule.

Section R392-400-2 is a new section added to describe individuals and groups to whom this rule applies, and to specify exclusions to such.

In Section R392-400-3: 1) added definitions for Imminent health hazard, and local health department; 2) modified the definitions for local health officer, safe drinking water, and wastewater; and 3) removed unnecessary definitions for Department, and Director.

In Sections R392-400-4 through R392-400-17, the Department has made nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah.

The Department made the following substantive amendments: 1) Tables 1, 2, and 3 were reformatted, and 2) Section R392-400-17 was modified to match the clause in most other rules promulgated under Title R392.

### Fiscal Information

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

##### A) State budget:

No anticipated cost or savings because the changes do not affect existing operations.

#### B) Local governments:

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

#### 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 on business because the changes do not affect existing operations. Nathan Checketts, Interim Executive Director

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

##### Regulatory Impact Table

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

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

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

The Interim Executive Director of the Department of Health, Nathan 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 26-15-2	Section 26-1-30
----------------	-----------------	-----------------

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	11/21/2021
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**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-400. Temporary Mass Gathering[s] Sanitation.**

**R392-400-1. Authority and Purpose.**

(1) This rule is authorized under ~~[Utah Code]~~ Sections 26-15-2, 26-1-5 and 26-1-30.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a temporary mass gathering to:

(a) protect, preserve and promote the health and safety of the public;

(b) prevent and control the incidence of communicable diseases;

(c) reduce hazards to health and environment;

(d) maintain adequate sanitation and public health; and

(e) promote the general welfare of the public.

**R392-400-2. [Purpose]Applicability.**

(1) Unless exempted in Subsection (2), this rule applies to any person who owns or operates a temporary mass gathering, as defined.

(2) A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded. ~~[It is the purpose of this rule:~~

(1) to protect, preserve and promote the health and safety of the public;

(2) to prevent and control the incidence of communicable diseases;

(3) to reduce hazards to health and environment;

(4) to maintain adequate sanitation and public health; and

(5) to promote the general welfare of the public.]

**R392-400-3. Definitions.**

The following definitions apply in this rule:

(1) "Department" means the Utah Department of Health (UDOH).

(2) "Director" means the executive director of the Utah Department of Health or the executive director's designee.]

(1)(3) "Drinking [W]ater [S]tation" means a location where a person may obtain get safe drinking water free of charge.

(2)(4) "Emergency [M]edical [P]rovider" means the same as [E]mergency [M]edical [S]ervices [P]rovider as defined in Section 26-8a-102.

(3)(5) "First [A]id [S]tation" means a temporary or permanent enclosed space or structure where a person can receive first aid and emergency medical care.

(4) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, pest infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

(5) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

(6) "Local [H]ealth [O]fficer" means the [director]health officer of the local health department having jurisdiction, or [the health officer's designee]a designated representative.

(7) "Operator" means a person who represents a group, corporation, partnership, governing body, association, or other public or private organization legally responsible for obtaining the necessary permits for the overall operation of a temporary mass gathering.

(8) "Owner" means any person who alone, jointly, or severally with others:

(a) has legal title to any premises, with or without accompanying actual possession[ thereof]; or[;]

## NOTICES OF PROPOSED RULES

(b) has charge, care, or control of any premises, as legal or equitable owner, agent of the owner, or lessee.

(9) "Permit" means a written form of authorization written in accordance with this rule.

(10) "Person" means any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the [S]state or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law.

(11) "Safe [D]drinking [W]water" means potable water meeting the Department of Environmental Quality, Division of Drinking Water ~~[State safe drinking water]~~ rules or bottled water as regulated by the Utah Department of Agriculture and Food.

(12) "Solid [W]waste" means garbage, refuse, trash, rubbish, hazardous waste, dead animals, sludge, liquid or semi liquid waste, other spent, useless, worthless, or discarded materials or materials stored or accumulated for ~~[the purpose of]~~ discarding, materials that have served their original intended purpose.

(13) "Staff" means any person who:

(a) works for or provides services for or on behalf of the operator or a vendor, or

(b) is a vendor at a gathering.

(14) "Temporary [M]mass [G]gathering" or "Gathering" means an actual or reasonably anticipated assembly of 1,000 or more people, which continues or can reasonably be expected to continue for two or more hours ~~[per]~~ a day, at a site or sites for a purpose different from the designed use and usual type of occupancy. ~~[A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded.]~~

(15) "Vendor" means any person who sells or offers food for public consumption.

(16) "Wastewater" means ~~[used water or water carried wastes]~~ sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state.

### **R392-400-4. Permit ~~[To]~~to Operate Required.**

(1) A person may not operate a temporary mass gathering without a valid written permit issued by the local health officer.

(2) The local health officer may exempt a parade from the permit requirement if the operator submits an application as required in Section R392-400-6 and the local health officer determines that the availability of existing public sanitary facilities, drinking water and trash containers is sufficient to protect public health.

(3) A temporary mass gathering may not exceed 16 consecutive days unless otherwise approved by the local health officer.

(4) The local health officer may attach conditions or grant waivers to a permit, in accordance with this rule, ~~[in order]~~ to meet specific public health and safety concerns.

### **R392-400-5. Gathering Operator Required ~~[On]~~on Site.**

(1) The operator shall establish a headquarters at the gathering site.

(2) The operator or the operator's designee shall be present at the gathering ~~[at all times]~~ during operating hours.

### **R392-400-6. Permit Application Required.**

(1) The local health officer shall prescribe the application process, and shall require the applicant to submit an application at least 15 days ~~[prior to]~~ before the first advertisement of the gathering and at least 30 days ~~[prior to]~~ before the first day of the gathering. The local health officer may grant an exception to this requirement on a case by

case basis because of the nature of the event, scarcity of problems associated with the event in the past or other public health related criteria.

(2) An application for a permit shall be submitted to the local health officer and include the following information:

(a) name, address, telephone number, and email ~~[and fax number (if applicable)]~~ of the operator;

(b) number of people expected to attend the gathering;

(c) a description of the type of gathering to be held with the date~~(s)~~ range and times the gathering will be held;

(d) estimated length of stay of attendees;

(e) name, address, telephone number, and email ~~[and fax number (if applicable)]~~ of property owner;

(f) the location of the gathering and a site plan delineating the area where the gathering is to be held including the following:

(i) the parking area available for patrons;

(ii) location of entrance, exit, and interior roadways and walks;

(iii) location, type, and provider of restroom facilities;

(iv) location and description of water stations;

(v) location and number of food stands, and the types of food to be served if known;

(vi) location, number, type, and provider of solid waste containers;

(vii) location of operator's headquarters at the gathering;

(viii) a plan to provide lighting adequate to ensure the safety of attendees and staff;

(ix) location of ~~[all]~~ each parking area[s] designated for the gathering and under the operator's control; and ~~[ ]~~

(x) the location of ~~[all]~~ each first aid station[s] and emergency medical ~~[resources.]~~ provider;

(g) the name of the solid and liquid waste haulers with whom the operator has contracted, unless exempted by this rule;

(h) a site clean up plan after the gathering;

(i) the total number, and qualifications of first aid station personnel;

(j) a plan for directional and exit signs;

(k) a plan developed by the operator to address nuisances or health hazards associated with animals present at the gathering;

(l) a plan[s] to address hazardous conditions as required in Section R392-400-12;

(m) information and plans on any artificially constructed structure or modified natural structure intended for recreational or therapeutic purposes where the public may be exposed to water via contact, ingestion, or aerosolization~~[ ]~~;

(n) an emergency medical services operational plan and the contact information of the emergency medical provider; and

(o) any other information specifically requested by the local health officer as necessary to protect public health.

### **R392-400-7. Inspections.**

(1) The local health officer may conduct inspections before, during, and after a gathering to ensure compliance with ~~[R392-400]~~ this rule, and approved plans.

(2) The operator shall provide the local health officer with access to ~~[all]~~ each area[s] of the gathering that the local health officer deems necessary and with the number of access credentials ~~[they]~~ requested.

(3) The operator shall effectively communicate the local health officer's access privileges to staff.

### **R392-400-8. Notice ~~[Of]~~of Violation ~~[Or]~~or Closing.**

(1) The local health officer may issue a notice of violation to the owner, operator or the operator's designee if the gathering fails to meet the requirements of this rule or the conditions of the permit.

(2) The local health officer shall, in accordance with Rule R392-100 Food Service Sanitation, direct the disposition of any food items, including ice and water, that have been adulterated or are otherwise unfit for human consumption.

(3) The local health officer may issue and post a notice of closure of the gathering or affected part~~[thereof]~~ to the owner, operator or the operator's designee if the local health officer determines that conditions at the gathering constitute a serious or imminent health hazard.

(4)(a) No gathering site or affected part~~[thereof]~~ that has been closed may be used for a gathering until the local health officer determines that the conditions causing the closure have been abated and written approval is received from the local health officer.

(b) The local health officer shall remove the posted notice described in Subsection (3) when~~[ever]~~ the ~~[violation(s) upon which closing, and posting were based]~~ imminent health hazard has been remedied.

(5) No unauthorized person may deface or remove a posted notice from any gathering site that has been closed by the local health officer.

(6) The operator may appeal a notice or closure in accordance with the procedures established by the local Board of Health or Title 63G, Chapter 4, Administrative Procedures Act~~[the Utah Administrative Procedures Act]~~, whichever ~~[is applicable]~~ applies.

#### **R392-400-9. Solid Waste Management.**

(1) The operator shall contract with a solid waste hauler approved by the local health officer.

(2)(a) The operator shall provide and strategically locate ~~[a sufficient number of]~~ enough covered waste containers ~~[approved by the health officer]~~ to effectively accommodate the solid waste generated at the gathering, as approved by the local health officer.

(~~[a]~~)b) The operator shall provide waste containers next to the hand wash stations.

(3) The operator shall ensure that the waste containers are emptied as often as necessary to prevent overflowing, littering, or insect or rodent infestation.

(4) The operator shall ensure that solid waste is cleaned from the property periodically during the gathering and that, within 24 hours following the gathering, the property is free of solid waste and is clean. The local health officer may allow for more than 24 hours to clean up the site because of the time of year, nature of the event or other extenuating circumstances if the local health officer is satisfied that the extension will not adversely affect public health.

(5) The operator shall ensure that solid waste is prevented from being blown from the gathering site onto adjacent properties.

(6) The operator shall ensure that ~~[all]~~ solid waste is collected and disposed of at a solid waste disposal or recycling facility meeting ~~[S]~~ state and local solid waste disposal facility requirements.

(7) The operator, staff, participants, and spectators shall comply with ~~[all]~~ applicable ~~[S]~~ state and local requirements for solid waste management.

#### **R392-400-10. Site Maintenance.**

(1) ~~[All]~~ ~~[b]~~ Buildings, structures and overnight parking provided for the gathering shall be maintained safe, clean, in good repair, and shall comply with ~~[all]~~ applicable laws.

(~~[3]~~)2) The operator shall eliminate any infestation of vermin within any part of a structure intended for occupancy, food storage, or

restroom facilities ~~[prior to]~~ before, during, and immediately following a gathering.

(~~[4]~~)3) The operator is responsible for the maintenance and sanitation of the gathering site and facilities. The operator shall take steps to prevent and abate any nuisance or insanitary condition ~~[which]~~ that may develop.

(~~[5]~~)4) A gathering site shall be constructed to provide surface drainage adequate to prevent flooding of the gathering site and to prevent water related nuisances on adjacent properties.

(~~[6]~~)5) The operator shall ensure ~~[S]~~ sufficient signs ~~[shall identify]~~ identifying and showing the location of first aid, restroom, and drinking water facilities so spectators and participants can readily find them from any place on the gathering site.

(~~[7]~~)6) The operator shall provide lighting adequate to ensure the safety of attendees.

(~~[8]~~)7) ~~[All]~~ Each parking area[s] used for the gathering and under the control of the gathering operator ~~[must]~~ shall meet the requirements of this rule.

#### **R392-400-11. Emergency Medical Care Requirements.**

(1) The operator shall ensure that:

(a) the gathering has at least one first aid station~~[-]~~;

(b) ~~[E]~~ emergency medical care and necessary supplies and equipment ~~[shall be]~~ are provided as determined by the local health officer, the emergency medical provider, and the emergency medical operations plan~~[-]~~ ~~The health officer or emergency medical provider may require more than one first aid station.~~

(~~[2]~~)c) ~~[F]~~ first aid stations ~~[shall]~~ afford privacy to a person receiving care or treatment~~[-]~~;

(~~[3]~~)d) ~~[F]~~ first aid stations ~~[shall be]~~ are of sufficient size to accommodate the number of care givers required, and the predicted number of sick or injured persons~~[-]~~;

(~~[4]~~)e) ~~[F]~~ first aid stations ~~[shall be]~~ are strategically located to provide expedient medical care for those attending or participating in the gathering~~[-]~~;

(~~[5]~~)f) ~~[F]~~ first aid stations ~~[shall be]~~ are easily accessible by emergency vehicles~~[-]~~;

(g) ~~[The operator shall provide]~~ the emergency medical provider is provided with a map of the gathering site ~~[which]~~ that includes:

(i) location of first aid stations~~[-]~~;

(ii) emergency vehicle ingress and egress routes~~[-]~~;

(iii) landing zones, ~~[if applicable]~~~~[-]~~; and

(iv) rendezvous locations~~[-]~~;

(~~[6]~~)h) ~~[A]~~ a first aid station ~~[shall be]~~ that is clearly marked and identifiable as a first aid station is provided~~[-]~~;

(i) medical staff have access to telephones or radios to contact outside emergency medical services;

(j) the staff person in charge of the first aid station keeps accurate records of patients and treatment; and

(k) the local health officer is notified of each case involving a serious injury or communicable disease in accordance with Rule R386-702, Communicable Disease, and Rule R386-703, Injury Reporting.

(~~[7]~~)2) The local health officer or emergency medical provider may require:

(a) more than one first aid station;

(b) ~~[The health officer or emergency medical provider may require]~~ additional emergency medical services personnel as deemed necessary; or

(c) the operator to provide dedicated stand-by ambulances and personnel at the gathering.

## NOTICES OF PROPOSED RULES

~~\_\_\_\_\_ (8) The operator shall ensure that all medical staff have access to telephones or radios to contact outside emergency medical services.~~

~~\_\_\_\_\_ (9) The local health officer or emergency medical provider may require the operator to provide dedicated stand-by ambulances and personnel at the gathering.~~

~~\_\_\_\_\_ (10) The operator shall ensure that the staff person in charge of the first aid station keeps accurate records of patients and treatment, and that the health officer is notified of all cases involving a serious injury or communicable disease in accordance with R386-702 Communicable Disease Rule and R386-703 Injury Reporting Rule.]~~

### R392-400-12. Hazardous Conditions.

The operator shall develop contingency plans for any dangerous condition~~[s which]~~ that may occur during the gathering. The plans may include evacuation, cancellation, or delay of the gathering, and provision for support facilities.

### R392-400-13. Food Protection.

(1) The operator and vendors shall comply with Rule R392-100, Food Service Sanitation.

(2) The operator shall assure that food vendors ~~[obtain]~~get required food service operating permits from the local health officer]department.

### R392-400-14. Safe Drinking Water Supply Requirements.

(1) The operator shall provide water free of charge and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff.

(2) Supplied potable drinking water for public use shall be:  
(a) dispensed from a potable water supply system that is designed, installed, and operated according to the requirements set forth by:

(i) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Drinking Water; and

(ii) local health department regulations; or

(b) ~~[The operator shall ensure that all drinking water is from a state approved drinking water system or ]~~commercially bottled water meeting 21 CFR 129, Processing and Bottling of Bottled Drinking Water ~~[(April 1, 2015)]~~ and 21 CFR 165.110, Bottled Water ~~[(April 1, 2015)]~~ from a company registered with the U.S. Food and Drug Administration and the Utah Department of Agriculture and Food.

~~[(2)]3~~ Drinking water hauled to the gathering shall be hauled and dispensed in a manner that protects public health as determined by the local health officer.

~~\_\_\_\_\_ (3) The operator shall provide water free of charge and strategically locate drinking water stations to effectively meet the drinking water needs of attendees and staff.]~~

(4) At least four drinking water stations are required. An additional drinking water station is required for each additional 500 attendees above 1,000 persons. The local health officer may reduce the number of additional drinking water stations or require more than one drinking water station for each additional 500 attendees above 1,000 persons because of the time of year, heat index, nature of the event or other public health related criteria. If containers are needed to drink the water at the required drinking water stations, the operator ~~[must]~~shall provide single use containers.

### R392-400-15. Wastewater Disposal Requirements.

(1) ~~[All w]~~Wastewater shall be disposed of in accordance with state and local wastewater rules.

~~[(3)]2~~ The operator may use portable restroom facilities and wastewater holding tanks as determined by the local health officer.

~~[(4)]3~~ The number of toilets shall be provided in accordance with Table 1.

[TABLE 1

Minimum Numbers of Toilets Required

Average Time at Gathering (hours)					
	1	2	3	4	5
Peak Crowd					
1000	4	6	8	8	9
2000	5	6	9	12	14
3000	6	9	12	16	20
4000	8	13	16	22	25
5000	12	15	20	25	31
6000	12	15	23	30	38
7000	12	18	26	35	44
8000	12	20	30	40	50
10000	15	25	38	50	63
12500	18	31	47	63	78
15000	20	38	56	75	94
17500	22	44	66	88	109
20000	25	50	75	100	125
25000	38	69	99	130	160
30000	46	82	119	156	192
35000	53	96	139	181	224
40000	61	109	158	207	256
45000	68	123	178	233	288
50000	76	137	198	259	320
55000	83	150	217	285	352
60000	91	164	237	311	384
65000	98	177	257	336	416
each additional 10,000	15	25	38	50	63

(table continued for 6-10 hours)

	6	7	8	9	10
1000	9	11	12	13	13
2000	16	18	20	23	25
3000	24	26	30	34	38
4000	30	35	40	45	50
5000	38	44	50	56	63
6000	45	53	60	68	75
7000	53	61	70	79	88
8000	60	70	80	90	100
10000	75	88	100	113	125
12500	94	109	125	141	156
15000	113	131	150	169	188
17500	131	153	175	197	219
20000	150	175	200	225	250
25000	191	221	252	282	313
30000	229	266	302	339	376
35000	267	310	352	395	438
40000	305	354	403	452	501
45000	343	398	453	508	563
50000	381	442	503	564	626
55000	419	486	554	621	688
60000	457	531	604	677	751
65000	495	575	654	734	813
each additional 10,000	75	88	100	113	125

TABLE 1

Minimum Numbers of Toilets Required

Average Time at Gathering (hours)					
	1	2	3	4	5
Peak Crowd					
1,000	4	5	8	8	9
2,000	5	6	9	12	14
3,000	6	9	12	16	20
4,000	8	13	16	22	25
5,000	12	15	20	25	31



6,000	12	15	23	30	38
7,000	12	18	26	35	44
8,000	12	20	30	40	50
10,000	15	25	38	50	63
12,500	18	31	47	63	78
15,000	20	38	56	75	94
17,500	22	44	66	88	109
20,000	25	50	75	100	125
25,000	38	69	99	130	160
30,000	46	82	119	156	192
35,000	53	96	139	181	224
40,000	61	109	158	207	256
45,000	68	123	178	233	288
50,000	76	137	198	259	320
55,000	83	150	217	285	352
60,000	91	164	237	311	384
65,000	98	177	257	336	416
Each additional 10,000	15	25	38	50	63
Table continued for 6-10 hours					
Average Time at Gathering (hours)					
Peak Crowd	6	7	8	9	10
1,000	9	11	12	13	13
2,000	16	18	20	23	25
3,000	24	26	30	34	38
4,000	30	35	40	45	50
5,000	38	44	50	56	63
6,000	45	53	60	68	75
7,000	53	61	70	79	88
8,000	60	70	80	90	100
10,000	75	88	100	113	125
12,500	94	109	125	141	156
15,000	113	131	150	169	188
17,500	131	153	175	197	219
20,000	150	175	200	225	250
25,000	191	221	252	282	313
30,000	229	266	302	339	376
35,000	267	310	352	395	438
40,000	305	354	403	452	501
45,000	343	398	453	508	563
50,000	381	442	503	564	626
55,000	419	486	554	621	688
60,000	457	531	604	677	751
65,000	495	575	654	734	813
Each additional 10,000	75	88	100	113	125

(~~a~~)4 If alcoholic beverages are consumed at the gathering, the operator shall increase the number of required toilets by 40%.

(~~b~~)5 Five percent, with a minimum of one, of the required number of toilets shall be [~~handicap~~]accessible and shall be identified by the International Symbol of Accessibility in compliance with 36 CFR 1191[~~-(July 1, 2011), Appendices B and D, of the~~], Americans with Disabilities Act Accessibility Guidelines.

(~~e~~)6 For an event lasting longer than ten hours, the number of required toilets is calculated by adding the number of toilets for ten hours to the number of toilets for those hours over ten or a portion thereof, as determined in Table 1.

(~~d~~)7 The operator shall locate portable toilets a minimum of 100 feet from any food service operation and not more than 300 feet from grand stand or spectator or from other areas of activity [~~which~~]that pertain to the gathering, as outlined in the permit application. Where site conditions limit the placement of portable toilets, the local health officer may allow exemptions to these distances.

(~~e~~)8(a) The operator shall provide working hand wash stations at a minimum rate of one per ten portable toilets or portion thereof.

(b) The operator shall provide soap, water and single use towels at each hand wash station.

(c) Where conditions make the use of soap and water impractical, the local health officer may allow sanitizing gel in place of soap and water.

(d) Sanitizing gel may not be used in place of soap and water at hand wash stations used by food service workers.

(~~f~~)9 The operator shall provide a minimum of one covered trash container for every ten portable toilets or portion thereof.

(~~g~~)10 The operator shall ensure that [~~all~~] portable toilets are of sound construction[~~-(such as non-absorbent polyethylene)~~], easily cleanable, and durable.

(~~h~~)11 Each portable toilet [~~must~~]shall be secured against vandalism and adverse weather conditions by tie[~~-~~]downs, anchors or similar effective means.

(~~i~~)12 The operator shall contract with a liquid waste hauler that is permitted by the local health department in accordance with Rule R317-550, Rules for Liquid Waste Operations.

(~~h~~)13(a) The operator shall ensure that [~~all~~] wastewater is removed from each portable toilet at least once every 24 hours or more frequently as necessary.

(b) On a case by case basis, the local health officer may change this frequency because of the time of year, weather conditions, nature of the event or other public health related criteria.

(c) [~~All~~]Any wastewater removed shall be disposed of at a wastewater treatment facility in accordance with [~~S~~]state and local wastewater disposal laws.

(~~m~~)14 The operator shall ensure that each portable toilet is serviced and sanitized as necessary to maintain sanitary conditions.

(~~n~~)15 At the conclusion of the gathering, each portable restroom unit [~~must~~]shall be serviced then removed within 48 hours. The local health officer may extend or shorten this time because of the time of year, weather conditions, [~~the~~]nature of the event, or to meet other public health related criteria.

#### R392-400-16. Penalty.

(1) Any person who violates [~~any provision of~~]this rule may be assessed a penalty as provided in [~~Subsection~~]Section 26-23-6.

(2) Each day [~~such~~]a violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for [~~all~~]any expense[s] incurred by the [~~department and~~]local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

#### R392-400-17. Severability.

[~~If a provision, clause, sentence, or paragraph of this rule or the application thereof to any person or circumstances shall be ruled invalid, such ruling shall not affect the other provisions or applications of this rule, and to this end the provisions of this rule are severable.~~]If a provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

KEY: public health, temporary mass gatherings, special events

Date of Last Change: 2022[~~November 1, 2016~~]

Notice of Continuation: November 1, 2021

Authorizing, and Implemented or Interpreted Law: 26-15-2, 26-1-5, and 26-1-30

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R392-501	Filing ID 54165

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R392-501. Temporary Labor Community Sanitation
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Administrative Rulewriting Manual for Utah. As required, the amendments to Rule R392-501 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Technical and conforming amendments were made to all sections of this rule to align with the Rulewriting Manual for Utah and remove superfluous and repetitive language, including the following: Tables 1, 2, and 3 were reformatted.
A new Section R392-501-19 was added to include a severability clause.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>								
<b>A) State budget:</b>								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>B) Local governments:</b>								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):								
No anticipated cost or savings because the changes do not affect existing operations.								
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):								
There is no fiscal impact on business because the changes do not affect existing business operations. Nathan Checketts, Interim Executive Director								
<b>6. A) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)								
<b>Regulatory Impact Table</b>								
<table> <tr> <th>Fiscal Cost</th><th>FY2022</th><th>FY2023</th><th>FY2024</th></tr> <tr> <td>State Government</td><td>\$0</td><td>\$0</td><td>\$0</td></tr> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0
Fiscal Cost	FY2022	FY2023	FY2024					
State Government	\$0	\$0	\$0					

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Interim Executive Director of the Department of Health, Nathan Checketts, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26-1-5	Section 26-15-2	Subsection 26-1-30(9)
Section 26-7-1	Subsection 26-1-30(23)	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	01/14/2022
<b>10. This rule change MAY become effective on:</b>	01/21/2022

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**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	12/01/2021
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**R392. Health, Disease Control and Prevention, Environmental Services.****R392-501. Temporary Labor Community Sanitation.****R392-501-1. Authority and Purpose.**

(1) This rule is authorized under ~~[Sections 26-1-5, 26-1-30(9), 26-1-30(23), 26-7-1, and 26-15-2]~~ Sections 26-1-5, 26-7-1, 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23).

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a temporary labor community, as defined by this rule, 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.

**R392-501-2. Applicability.**

(1) This rule applies to any person who owns or operates a temporary labor community ~~[in Utah]~~, unless specifically exempted.

(2) This rule applies to the repair, maintenance, use, operation, and occupancy of a temporary labor community ~~[ies]~~ designed, intended for use, or otherwise used for temporary human habitation ~~[in Utah]~~.

(3) This rule does not apply to any recreational camping, recreational vehicle park[s], or manufactured home community ~~[ies]~~.

**R392-501-3. Definitions.**

For the purposes of this rule ~~[the following terms, phrases, and words shall have the meanings herein expressed]:~~

(1) "Building Code" means International Building Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(2)(a) "Housing unit" means any living quarter[s], including a housing accommodation[s], rooming house[s], dormitory ~~[ies]~~, and manufactured home ~~[s]~~ maintained, directly or indirectly, in connection with any work of or place where work is being performed by a seasonal or temporary worker[s], whether or not rent is paid or reserved for use or occupancy.

(b) The term includes ~~[the]~~ any facility ~~[ies]~~ necessary to, or associated with, the buildings; and any area or site set aside and provided for camping of seasonal or temporary workers.

(c) ~~[The term]~~ "Housing unit" does not include a building[s] reserved exclusively for the personal use of the landowner or employer, including the primary residence, which may ~~[also]~~ serve as housing for family members and friends of the family.

(3) "Local health department" has the same meaning as provided in ~~[S]~~ Subsection 26A-1-102(5).

(4) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.

(5) "Manufactured home" means a factory assembled structure ~~[or structures]~~ equipped with the necessary service connections

## NOTICES OF PROPOSED RULES

and made so as to be readily movable as a unit ~~[or units]~~ on its own running gear and designed to be used as a dwelling unit without a permanent foundation. A modular home transported on wheels to its foundation is not a manufactured home.

(6) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.

(7) "Operator" means a person with ownership or overall responsibility for managing or operating a labor community.

(8) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use that threatens the health or well-being of the public.

(9) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(10) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.

(11) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.

(12) "Sanitary" means the condition of being free from infective, physically hurtful, diseased, poisonous, unwholesome, or otherwise unhealthful substances and being completely free from vermin, vectors, and pests and from the traces of either, and free of harborage for vermin, vectors, or pests.

(13) "Service building" means a structure located within a labor community that contains a toilet, hand sink, bathing, laundry, or recreational facilities.

(14) "Temporary labor community" or "Labor community" means one or more buildings, structures, tents or related facilities together with surrounding grounds designed, constructed, or used or intended for use as living quarters or housing facilities to temporarily accommodate groups such as seasonal migrant laborers or construction, exploration, mining, or demolition workers~~[-ete]~~.

(15) "Toilet fixture", ~~[as defined in this rule,]~~ means:

(a) a water flush toilet that discharges to a public sanitary sewer system or an approved onsite wastewater disposal system;

(b) a privy seat in a vault privy; or

(c) a chemical toilet in a portable restroom.

(16) "Vault privy" - means a toilet facility wherein the waste is deposited without flushing into a permanently-installed, watertight vault or receptacle. Vault wastes is periodically removed and disposed of in accordance with Rule R317-560.

(17) "Vector" means any organism such as an insect or rodent that transmits a pathogen that can adversely affect public health.

(18) "Vermin" means rats, mice, cockroaches, bedbugs, flies, or any other pest or vector as determined by the local health officer to be harmful to the life, health, or welfare of the public.

(19) "Wastewater" means discharges from ~~[at]~~ any plumbing facility~~[ies]~~ including~~[s]~~ rest room~~[s]~~, kitchen, and laundry fixtures, either separately or in combination.

### R392-501-4. General.

(1) ~~[This]~~ Except as in Subsection (2) this rule does not require a construction change in any portion of a labor community if the community was in compliance with the law in effect ~~[at the time]~~ when the community was constructed~~[-except as in R392-501-4(1)(a)]~~.

(~~[a]~~2) The local health officer may require construction changes if it is determined the labor community or portion thereof is

dangerous, unsafe, unsanitary, a nuisance or menace to life, health, or property.

~~[(2) Severability If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provision to other person or circumstances, and the remainder of this code, shall not be affected thereby.]~~

(3) The operator shall ~~[carry out the provisions]~~ ensure any temporary labor community meets the requirements of this rule.

(4) The operator shall comply with ~~[all]~~ applicable building, zoning, electrical, health, fire codes and ~~[all]~~ local ordinances.

(5)(a) An operator shall select or construct a location for the labor community that will provide adequate surface drainage.

(b) ~~[All]~~ Each site~~[s]~~ used for a labor community~~[ies]~~ shall be adequately drained.

~~[(c) They shall]~~ The location may not be subject to ~~[areas of]~~ periodic flooding, nor located within 200 feet of any swamp~~[s]~~, pool~~[s]~~, sink hole~~[s]~~, or other surface collection~~[s]~~ of water unless such stagnant water surface~~[s-are]~~ is subjected to continued mosquito control measures.

~~[(e)d]~~ The labor community shall be located so the drainage from and through the community will not endanger any domestic or public water supply.

~~[(d)e]~~ ~~[All]~~ Each site~~[s]~~ shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

~~[(e)6]~~ The operator shall make a reasonable effort to locate the labor community away from any known existing public health nuisance.

~~[(6)7]~~ For a labor community employing and housing ten or more individuals, the operator shall be on duty within the community premises or on call at ~~[all]~~ any time~~[s-that]~~ the labor community is occupied or shall designate a manager or attendant to do so.

~~[(7)8] [No labor community shall be operated]~~ A labor community may not operate for longer than one year without approval of the local health officer.

~~[(8)9]~~ In a labor community~~[ies]~~ where any dormitory type housing facility~~[ies-are]~~ is provided or where any occupied housing unit is not equipped with operable plumbing fixtures, the operator shall construct and maintain a service building according to the requirements of Section R392-501-11.

### R392-501-5. Housing Requirements.

(1) Housing for workers and their families shall be limited to one of the following:

(a) a building used exclusively for ~~[the purpose of]~~ human habitation;

(b) a fully-partitioned room in a building used for purposes other than human habitation, provided that persons may not be housed in buildings used for the shelter of livestock;

(c) a manufactured home approved by the local health officer; or

(d) a dormitory or sleeping room shared by workers, which shall be separate for each ~~[sex]~~ gender.

(2) ~~[Every]~~ Each housing foundation, exterior and interior wall, floor, ceiling, roof, gutter, leader and downspout, stairway, door and appurtenances~~[-thereto]~~ shall be:

(a) constructed in accordance with Building Code; and

(b) maintained in sound condition and in good repair.

(3) ~~[The]~~ Each floor~~[s]~~ of a habitable room~~[s]~~, hallway~~[s]~~, corridor~~[s]~~, toilet room~~[s]~~, laundry~~[ies]~~, pantry~~[ies]~~ and storage area~~[s]~~ shall meet the following requirements:

(a) Wooden floors shall be elevated a minimum of 12 inches above ground level at all points~~[s]~~.

(b) ~~[Every]~~Each toilet room, shower room, laundry room, and kitchen wall and ceiling surface shall be constructed and maintained ~~[reasonably]~~impervious to water[;].

(c) Each ~~[F]~~floor to wall juncture[s] shall be coved and sealed in any toilet room[s], shower room[s], laundry room[s], and kitchen[s;].

(d) Each ~~[F]~~floor surface[s] within two feet of ~~[the]~~a toilet or urinal shall be smooth, non-absorbent, and easily cleanable[;].

(e) A ~~[F]~~floor drain[s] shall be provided in ~~[all]~~each shower[s], bath[s], shower room[s], and laundry room[s]; ~~and~~.

(f) Minimum ceiling height, usable space, and habitable room size shall be constructed in compliance with Building Code.

(4)(a) ~~[Every]~~The operator shall ensure that each habitable room ~~[shall be]~~is provided with windows that are:

(i) weathertight[;];

(ii) operable;

(iii) ~~[and]~~in good repair; and

(iv) ~~[and shall be]~~except where the operator has supplied an operable mechanical ventilation device, operable ~~[except where the operator has supplied an operable mechanical ventilation device]~~.

(b) A ~~[P]~~properly fitted screen[s] of at least 16 mesh shall be provided for ~~[every]~~each operable window.

(5)(a) Each ~~[E]~~exterior door[s] shall be weathertight and in sound operating condition.

(b) If ~~[the]~~a doorway is used for ventilation, a tight[-]-fitting screen door with a self-closing device shall be provided.

(6) Except in an interior space only inhabited during the summer months, each ~~[I]~~interior space[s] intended for human occupancy shall ~~[be provided with]~~have a ~~[active or passive]~~space heating system[s] capable of maintaining an indoor temperature of not less than 68 degrees F at a point three feet above the floor.

~~[(a) Space heating systems are not required for interior spaces that are only inhabited during the summer months.]~~

(7)(a) The operator shall provide water heating equipment capable of heating water to a minimum temperature of 110 degrees F, and shall maintain ~~[such]~~the water heating equipment in proper operating condition.

(b) The operator shall supply hot water to each kitchen[s], hand sink[s], shower[s], tub[s], and laundry fixture[s].

(8) ~~[Unvented or unventable heaters employing a flame are prohibited.]~~The operator may not use a heater employing a flame that is unvented or unventable.

#### **R392-501-6. Sleeping Room Contents.**

(1)(a) The operator shall provide each occupant of the labor community with:

(~~[a]~~i) a bed and mattress with an impermeable mattress cover; or

(~~[b]~~ii) a cot.

(2)(b) Each ~~[provided]~~bed or cot shall be maintained in a sanitary condition and in good repair.

(3)(c) The operator shall ensure that each mattress[es], mattress cover[s], quilt[s], blanket[s], pillow[s], pillowcase[s], sheet[s], bedcover[s], and other bedding ~~[are]~~is kept clean and in good repair.

(4)(d) Beds or cots shall be elevated at least 12 inches from the floor.

(5)(2)(a) ~~[In]~~Except in Subsections (2)(b) and (2)(c), an open bay type sleeping area[s] containing four or more beds, the operator shall separate beds by a horizontal distance of at least five feet, reducible to three feet if beds are alternated head to foot.

(b) ~~[, except in the case of double stacked bunks, which shall have a minimum horizontal separation of six feet under all~~

~~circumstances]~~If a double stacked bunk is used, the minimum horizontal separation shall be a minimum of six feet.

(c) If a partition~~[s are]~~ is utilized to preclude face-to-face exposure between beds, spacing requirements may be modified to a minimum separation distance of three feet between adjacent beds upon approval of the local health officer.

(d) Triple deck bunks may not be used.

~~[(6) Triple deck bunks are prohibited.]~~

(7)(2) The operator shall provide each labor community occupant with ~~[suitable storage facilities in the sleeping room area. The following are acceptable]~~ a:

(a) locker[s] or closet[s];

(b) three feet of rod and shelving;~~or]~~

(c) a dresser; or

(d) equivalent storage space.

#### **R392-501-7. Water Supply.**

(1)(a) The operator shall ensure that the labor community and each service building ~~[provided with]~~that has a plumbing fixture[s] is supplied with ~~[adequate and convenient potable water for drinking, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing areas, hand washing, and bathing]~~potable water adequate and convenient for the use of each plumbing fixture.

(b) A water supply shall be capable of delivering a minimum of 35 gallons per person per day.

(c) ~~[Water outlets shall be distributed throughout the community in such a manner that no housing unit is more than 100 feet from a water faucet (i.e. spigot) if water is not piped directly to the housing unit.]~~If water is not piped directly to a housing unit, each housing unit shall have available a water faucet no more than 100 feet away.

(2) Potable water supply systems for use by labor community occupants shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Drinking Water; and

(c) local health department regulations.

(3) If a labor community experiences or will experience a disruption of potable water or sewer service for more than four hours, for any reason the operator shall:

(a) ~~[The operator shall]~~Notify the local health officer within one hour of becoming aware of the service disruption, and;

(b) ~~[The operator shall]~~have a backup water supply plan~~;~~ which shall that:

(i) provides for two liters of water per day per person for drinking[;]; and[;]

(ii) includes a strategy for either relocating laborers or providing the following services, as approved by the local health officer:

(A) ~~[an]~~An alternative source of potable water; and

(B) an alternative process for the disposal of human waste.

(4) ~~[Q]~~Each outlet[s] for non-potable water, ~~[such as water]~~including each outlet for industrial or firefighting purposes, shall be posted or otherwise marked in a manner that will ~~[indicate]~~clearly show that the water is unsafe and is not to be used for any purpose detailed in Subsection R392-501-5(1)(a).

(5) ~~[In]~~Except as in Subsection (6), a labor community[ies] as described in Subsection R392-501-4(~~[8]~~2)~~;~~ one drinking fountain shall be provided for each 100 occupants or fraction thereof, except as in R392-501-7(6). shall be provided with at least one drinking fountain for each 100 occupants or fraction thereof that is:

## NOTICES OF PROPOSED RULES

(a) ~~[Drinking fountains shall be]~~equipped with a pressure regulating valve; and

~~(b) [shall be]~~maintained in a sanitary manner.

~~(6)(a) [If the provision of a drinking fountain is impractical as determined by a local health officer,]~~If a local health officer determines that the inclusion of a drinking fountain is impractical, the operator shall provide:

~~(i) [a]~~i) commercially bottled water; or

~~(ii) [a]~~ii) ~~a [adequate]~~ supply of single service drinking cups to be used in conjunction with a drinking water dispenser~~[as follows]:~~

~~[(i) Common drinking cups are prohibited.]~~

~~(ii) [b]~~ii) ~~[S]~~A suitable waste container[s] shall be provided for discarded single service drinking cups.

~~(iii) [c]~~iii) ~~[D]~~Each drinking water dispenser[s] shall be:

~~(i) [A]~~i) filled only with potable drinking water;

~~(ii) [B]~~ii) designed, constructed, and serviced so that sanitary conditions are maintained;

~~(iii) [C]~~iii) capable of being closed;

~~(iv) [D]~~iv) equipped with a tap; and

~~(v) [E]~~v) clearly marked as to the nature of its contents and not used for any other purpose.

~~(iv) [d]~~~~[Θ]~~An alternative method of providing drinking water as described in Section R392-501-6 may not use any common drinking cup or open container[s] [such as] including any barrel[s], pail[s], or tank[s] [for drinking water] from which the water must be dipped or poured[; are prohibited, whether or not they are fitted with a removable cover].

~~(7) [The operator may be required to sample water systems operated on a seasonal basis for bacteriologic analysis, as determined by the local health officer.]~~The local health officer may require an operator to sample a water system operated on a seasonal basis for bacteriologic analysis.

### **R392-501-8. Wastewater Disposal Requirements.**

(1)(a) The operator shall make sewer service available to a labor community.

(2)(b) ~~[S]~~A sewer system[s] for use by community occupants shall be designed, installed, and operated according to the requirements set forth by:

~~(i) [a]~~i) Plumbing Code;

~~(ii) [b]~~ii) The Utah Department of Environmental Quality, Division of Water Quality under Title R317, Water Quality;

~~(iii) [c]~~iii) local health department regulations; and

~~(iv) [d]~~iv) the local sewer district having jurisdiction.

~~(3) [2]~~~~[All w]~~Wastewater shall be discharged to a public sanitary sewer system when~~[ever]~~ practicable.

~~(4) [3]~~Where connection to a public sanitary sewer is not practicable, wastewater shall be discharged to:

(a) an approved onsite wastewater disposal system;

(b) a permitted holding tank; or

(c) a vault privy which shall be located, constructed, and maintained according to the requirements of Rule R317-560, Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies, and local health department regulation in such a manner that:

(i) users do not contact waste matter deposited;

(ii) access to the privy interior or vault is minimized for flies, insects, rats, and other animals;

(iii) surface or ground water cannot enter the vault, either as runoff or as flood water;

(iv) the waste material in the vault privy cannot contaminate a water supply, stream, or body of water; and

(v) odors are minimized both inside and outside the privy structure.

~~(5) [4]~~ The operator shall submit ~~[all required]~~ plans for the construction or alteration of a wastewater disposal system in accordance with Title R317, Water Quality, before~~[prior to]~~ commencing construction or alteration.

### **R392-501-9. Laundry Facility Requirements.**

(1) The operator shall provide:

(a) one mechanical washing machine or one double laundry tray or two tubs for each 30 workers, or fraction thereof;~~[or]~~

(b) transportation at least weekly to nearby laundromat; or

(c) a contract with a commercial linen service.

(2) The operator shall provide:

~~(a)~~ one service sink in the same area as each laundry facility~~[ies]~~~~[-]; and~~

~~(3) [b]~~ ~~[The operator shall provide facilities]~~ a facility for drying clothes.

~~(4) [3]~~ The operator shall ensure that each building[s] containing laundry facilities ~~[are]~~is maintained in a clean and sanitary condition.

### **R392-501-10. Toilet and Bath Requirements.**

(1)(a) The operator shall ~~[make]~~ensure that each of the following ~~[operable]~~plumbing fixtures is available to each labor community occupant:

~~(i) [a]~~i) a toilet fixture;

~~(ii) [b]~~ii) a shower or bath fixture; and

~~(iii) [c]~~iii) a hand sink installed at a ratio of one per six workers in a convenient location, as approved by the local health officer.

~~(2) [b]~~ The number of toilet fixtures or privy seats provided for each ~~[sex]~~gender shall be based on the maximum number of workers of that ~~[sex]~~gender which the labor community is designed to house at any one time, and shall be calculated from~~[Section R392-501-11]~~ Table ~~[H]~~1.

~~(3) [c]~~ The number of shower or bathing facilities provided for each ~~[sex]~~gender shall be based on the maximum number of workers of that ~~[sex]~~gender which the labor community is designed to house at any one time, and shall be calculated from~~[Section R392-501-11]~~ Table ~~[H]~~2.

~~(4) [2]~~ ~~[When]~~If [the plumbing fixtures listed in Subsection R392-501-10(1) are] a toilet or bath fixture is located within a housing unit, the toilet or bath area shall be provided with:

~~[(a) a toilet and bathing room shall have:]~~

~~(i) [a]~~a) a window not less than six square feet in area opening directly to the outside area; or

~~(ii) [b]~~b) ~~[operable]~~mechanical ventilation.

~~[(5) Toilet facilities and toilet rooms shall be easily cleanable.]~~

~~(6) [3]~~ The operator shall ensure that each toilet facility, toilet room[s], and bathroom~~[s are]~~ is easily cleanable and maintained in a clean and sanitary condition.

### **R392-501-11. Service Building Requirements.**

(1) ~~[E]~~The operator shall ensure that each labor community having housing units as described in R392-501-4(8) [9] [shall be] is provided with at least one service building[or buildings] for the use of labor community occupants that meets the following requirements: [-]

~~[(2) A service building shall meet the following requirements:]~~

(a) ~~[It shall have -]~~Interior walls shall be constructed of smooth, moisture-resistant material to facilitate frequent washing and cleaning.

(b) ~~[A]Each~~ outer opening[s] shall be effectively screened.

(c) ~~[It shall be provided with a]~~ A minimum of 10 foot candles of exterior lighting shall be provided to ~~[indicate]~~ show the location of the building and entrance doorway[s].

(d) ~~[F]Each~~ toilet or privy room[s] and laundry facility[ies] shall be provided with a minimum of 10 foot candles of interior lighting.

(e) ~~[A]Any~~ approach[es] to ~~[any]~~ a service building shall be free from obstruction.

(f) Any common-use potable water faucet inside or connected to a service building ~~[shall]~~ may not have a threaded spigot.

(~~[3]~~2) ~~[F]Except for Subsection (3),~~ the number of toilets or privy seats provided in a service building for each ~~[sex]~~gender shall be based on the maximum number of workers of that ~~[sex]~~gender which the labor community is designed to house at any one time, and shall be calculated from Table ~~[F]1~~.

TABLE 1  
Required Minimum Toilet Fixtures in a Labor Community

Number of Workers of Same Sex	Required Toilet Fixture(s)
1 - 5	1 toilet or privy seat
6 - 30	2 toilets or privy seats
31 - 45	3 toilets or privy seats
46 - 60	4 toilets or privy seats

TABLE 1 Required Minimum Toilet Fixtures in a Labor Community	
Number of Workers of Same Gender	Required Toilet Fixtures
1 - 5	1 toilet or privy seat
6 - 30	2 toilets or privy seats
31 - 45	3 toilets or privy seats
46 - 60	4 toilets or privy seats

(~~[4]~~3) Labor communities employing fewer than six workers, irrespective of ~~[sex]~~gender, only require one toilet or privy if located in a single occupancy toilet room that can be locked from the inside.

(~~[5]~~4)(a) ~~[U]A~~ urinal[s] may be provided on the basis of one unit for each 18 men or fraction thereof, provided the urinal is installed in addition to a toilet at the same location.

(b) The required number of toilet fixtures for men may be reduced by up to 1/3 by installing urinals in this ratio.

(c) The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture.

(~~[6]~~5) ~~Each~~ ~~[F]toilet facility[ies]~~ and toilet room[s] shall be easily cleanable.

(~~[7]~~6)(a) Except as provided in Subsection ~~[R392-501-44]~~(~~[7]~~6)(a)~~[c]~~, a separate toilet room[s] within the service building shall be provided for each ~~[sex]~~gender.

(b) ~~[These rooms]~~ Each toilet room shall be distinctly marked "for men" ~~[and]~~ or "for women" by a sign[s] printed in ~~[E]~~english and in the native languages of the persons occupying the temporary labor community, or marked with easily understood pictures or symbols.

(a)~~[c]~~ Where a toilet room will be occupied by no more than one person at a time, can be locked from the inside, and contains at least one toilet, separate toilet rooms for each ~~[sex]~~gender need not be provided.

(~~[8]~~7)(a) A service building toilet room shall:

(i) have a window not less than ~~[6]~~six square feet in area opening directly to the outside area; or

(ii) ~~[shall]~~ be ~~[otherwise satisfactorily]~~ ventilated in a manner approved by the local health officer.

(b) Outside openings shall be screened with 16 mesh material.

(c) Each vault privy room shall be ventilated with a properly screened opening or openings of at least two square feet.

(~~[9]~~8) A toilet fixture or urinal may not be located in a room used for other than toilet purposes.

(~~[10]~~9)(a) A service building as required in Subsection R392-501-4(~~[8]~~9) shall be located within 200 feet of the door of any housing unit.

(b) A vault privy may not be located closer than 100 feet to a sleeping room, dining room, designated lunch area, or kitchen.

(~~[11]~~10) ~~[S]A~~ sink[s] shall be located ~~[either]~~ in the same room as a toilet fixture[s] or immediately adjacent to the toilet room or service building.

(~~[12]~~11) The operator shall provide soap and toilet tissue in ~~[suitable]~~ dispensers in each service building.

(~~[13]~~12) The operator shall provide at least one solid, easily cleanable, covered waste receptacle for the collection of solid waste for each toilet room within a service building.

(~~[14]~~13) Except where an alternate hand drying method is approved by the local health officer, ~~[F]the~~ operator shall provide clean individual disposable towels at each sink. ~~[Alternate hand drying methods approved by the local health officer may be substituted for individual disposable towels.]~~

(~~[15]~~14) The number of shower or bathing facilities provided in a service building for each ~~[sex]~~gender shall be based on the maximum number of workers of that ~~[sex]~~gender which the labor community is designed to house at any one time, and shall be calculated from Table ~~[H]2~~.

TABLE 2  
Required Minimum Shower or Bathing Facilities  
in a Labor Community

Number of Workers of Same Sex	Required Shower or Bathing Facility
1 - 15	1 shower or bath
16 - 30	2 showers or baths
31 - 45	3 showers or baths
46 - 60	4 showers or baths

TABLE 2 Required Minimum Shower or Bathing Facilities	
Number of Workers of Same Gender	Required Shower or Bathing Facilities
1 - 5	1 toilet or privy seat
6 - 30	2 toilets or privy seats
31 - 45	3 toilets or privy seats
46 - 60	4 toilets or privy seats

(~~[16]~~15) Labor communities employing fewer than six workers, irrespective of ~~[sex]~~gender, only require one shower or bath if located in a single occupancy room that can be locked from the inside.

(~~[17]~~16)(a) ~~[Except as provided in Subsection R392-501-44(15)(a), where shower or bathing facilities are communal, s]~~ Except as in Subsection (16)(c), separate bathing or shower area[s] shall be provided for each ~~[sex]~~gender.

(b) ~~[These areas]~~ Each bathing or shower area shall be distinctly marked "MEN" or "WOMEN" by signs printed in English and in the native languages of the persons occupying the temporary labor community, or marked with easily understood pictures or symbols.

(a)~~[c]~~ ~~[S]A~~ separate shower or bathing area[s] for each ~~[sex]~~gender need not be provided if:

- (i) each shower or bathing room~~[s-are]~~ is designed to be occupied by no more than one person at a time; and
- (ii) each shower or bathing room[s] can be locked from the inside.

**R392-501-12. Toilet and Handwashing Accessibility Requirements for Offsite Labor Locations.**

(1)(a) ~~[On]~~Except in Subsection (1)(d), at any offsite ~~[premises]~~labor location where a worker~~[s-are]~~ is employed or permitted to work for a period of three hours or more, the operator shall provide within a convenient distance of the work~~[ing]~~ area sufficient, suitable and separate toilet and handwashing facilities.~~[-The operator shall use the following standards to determine the number of toilet and handwashing facilities needed, and the distance to each:]~~

(1)(b) For one to 20 workers, male or female, one toilet facility and one handwashing facility shall be provided within a one-quarter-mile walk of the work area~~[s]~~.

(1)(c) For ~~[work crews of]~~21 or more workers, one toilet facility per every 20 males or fraction thereof and one toilet facility for every 20 females or fraction thereof~~[-These toilet facilities shall be-]~~ shall be provided within a one-quarter-mile walk of the work area~~[s-or]~~.

(1)(d) ~~[As]~~If approved by the local health officer and through a written agreement with the workers, in the native language of the workers, informing them of such, the operator may ~~[develop a written agreement in the native language of the workers that shall state that the operator will furnish readily available transportation that provides]~~provide readily available transportation with prompt access, within 10 minutes, to a toilet facility once during any continuous four hours of work.

(2) Each ~~[T]~~toilet and associated handwashing facility~~[ies]~~ shall be ~~[accessibly]~~located in close proximity to each other.

(3) The operator shall notify each employee of the location of ~~[the]~~each available toilet~~[-and]~~, handwashing facility~~[ies]~~, and drinking water, and shall allow each employee reasonable opportunities during the workday to use them.

(4) Each ~~[P]~~portable toilet facility~~[ies]~~ shall be operational and maintained in a clean and sanitary condition.

(5) ~~[P]~~Each portable handwashing facility~~[ies]~~ shall be:

(a) refilled with potable water as necessary to ensure an adequate supply; and

(b) shall be maintained in a clean and sanitary condition.

(6) ~~The~~ ~~[P]~~disposal of any waste[s] from a toilet ~~[and]~~or handwashing facility~~[ies]~~ ~~[shall]~~may not cause an unsanitary condition[s].

(7) The operator shall provide an adequate supply of disposable toilet tissue and single use towels for worker use.

**R392-501-13. Operation and Maintenance.**

(1) ~~[All]~~Each building~~[s-]~~ and associated grounds, rooms, equipment, and furnishings shall be maintained in a clean and operable condition.

(2) ~~[All-]~~Reasonable means shall be employed to eliminate or control infestations of vermin within ~~[all]~~each part[s] of any community~~[-This shall include-]~~ including approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

(3) Each labor community shall be equipped with at least a 24-unit ANSI compliant first aid kit. The operator shall ensure that each first aid kit is:

- (a) properly stocked;
- (b) readily accessible; and
- (c) conveniently located.

(4) The operator of a community with onsite staff shall employ at least one individual who is adequately trained to ~~[render]~~provide first aid~~[-This individual should-]~~ and possesses at least a certificate of completion of the Basic First Aid Course as presented by the American National Red Cross or its equivalent.

**R392-501-14. Food Service.**

When food service is provided for labor community members, any food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in Rule R392-100, Food Service Sanitation, and local health department regulations.

**R392-501-15. Solid Wastes.**

(1)(a) The operator shall provide adequate containers to prevent the accumulation of solid waste in the labor community.

(2)(b) Solid waste generated at a labor community shall be stored in a container that is:

(i) leak-proof~~[s]~~;

(ii) non-absorbent~~[-container, which shall be-]~~; and

(iii) kept covered with a tight-fitting lid.

(3)2) ~~[All-]~~Solid waste[s] shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent harborage, or a public health nuisance.

**R392-501-16. Swimming Pool.**

The operator shall comply with Rule R392-302, Design, Construction, and Operation of Public Pools ~~[as well as other]~~and local health department regulations for ~~[all]~~any pool[s] or spa[s] made available to labor community members or staff.

**R392-501-17. Inspections and Investigations.**

(1)(~~a~~) ~~[U]~~Except as in Section R392-501-2, and upon presenting proper identification, the operator shall permit the local health officer to enter ~~[upon-]~~the premises of a labor community to perform inspections, investigations, reviews, and other actions as necessary to ensure compliance with ~~[Rule R392-501]~~this rule.

(b)2) The local health officer may not enter an occupied tent or other structure designed or intended for temporary human habitation without the express permission of the occupant except when a warrant is issued to an duly-authorized public safety officer which authorizes the local health officer to enter, or when the operator and the local health officer determine that there exists an imminent risk to the life, health, or safety of the occupant.

**R392-501-18. Closing or Restricting of Temporary Labor Communities or Housing Units.**

(1) If ~~[a]~~the local health officer deems a temporary labor community, housing unit, or portion thereof, to be an imminent risk to the life, health, or safety of the public, the temporary labor community, or ~~[unit area]~~or portion thereof, may be closed or its use ~~[may be]~~restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any temporary labor community or housing unit closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) ~~[It shall be unlawful for an operator to]~~The operator may not allow the public to utilize any temporary labor community, housing unit, or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.



**R392-501-19. Severability.**

If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other person or circumstances, and the remainder of this code, shall not be affected thereby.

**KEY:** public health, oil-gas-and mining camp, labor camp, migrant camp

**Date of Last Change:** 2022[September 10, 2018]

**Notice of Continuation:** October 21, 2021

**Authorizing, and Implemented or Interpreted Law:** 26-15-2; 26-1-5; 26-1-30(9); 26-1-30(23); 26-7-1

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal and Reenact

<b>Utah Admin. Code Ref (R no.):</b>	<b>R392-700</b>	<b>Filing ID 54173</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R392-700. Indoor Tanning Bed Sanitation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Administrative Rulewriting Manual for Utah. As required, the amendments to Rule R392-700 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the</b>

substantive differences between the repealed rule and the reenacted rule):

The amendments to Rule R392-700 provide nonsubstantive technical and conforming changes throughout this rule and remove superfluous and repetitive language.

Section R392-700-1 is expanded to explain the purpose of this rule.

Section R392-700-2 is modified to remove cumbersome, superfluous language.

In Section R392-700-3: 1) added definitions for Clean, Guardian, Local health department, Local health officer, and Minor; 2) amended definitions for Patron, Phototherapy device, Tanning device, and Tanning facility.

In Sections R392-700-4 through R392-700-12, the Department of Health (Department) has made mostly nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah. The Department also created new sections and moved existing provisions from other sections in the rule to improve readability and flow.

Substantive changes include: 1) Subsection R392-700-6(7)(i) is amended to remove "regarding skin cancer" to clarify that the information a patron may receive by contacting the local health department is not limited to skin cancer; 2) Subsection R392-700-10 is amended to require the operator to disinfect reusable protective eyewear with an EPA registered disinfectant after each use rather than sanitizing eyewear because a sanitizer is not sufficiently strong to control the spread of communicable diseases like conjunctivitis and impetigo. This amended language is now located in Section R392-700-7; and 3) Section R392-700-12 is a severability clause that is added to be consistent with other rules promulgated under Title R392.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the Department.
<b>B) Local governments:</b>
No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the local health departments.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>

## NOTICES OF PROPOSED RULES

No anticipated cost or savings because the substantive changes reflect current industry practice.

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

No anticipated cost or savings because the substantive changes reflect current industry practice.

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

No anticipated cost or savings because the substantive changes reflect current industry practice.

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

No anticipated cost or savings because the substantive changes reflect current industry practice.

**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 the substantive changes reflect current industry practices. Nathan Checketts, Interim Executive Director

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

#### Regulatory Impact Table

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

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

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

The Interim Executive Director of the Department of Health, Nathan 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 26-15-2	Section 26-1-5	Section 26-1-30
Section 26-15-13		

#### 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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	11/21/2021
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**R392. Health, Disease Control and Prevention, Environmental Services.**

~~**R392-700. Indoor Tanning Bed Sanitation.**~~

~~**R392-700 1. Authority and Purpose.**~~

~~This rule establishes tanning facility standards. It is authorized by Section 26-15-2 and 26-15-13.~~

**R392-700-2. Applicability.**

~~This rule applies to places where consideration is given in exchange for access to a tanning device. This rule does not apply to private, non-commercial use of tanning equipment exclusively for non-commercial use. A tanning facility may not operate in Utah unless the facility owner has obtained a permit to do so from the local health department with jurisdiction.~~

**R392-700-3. Definitions.**

~~As used in this rule:~~

- ~~(1) "Department" means the Utah Department of Health.~~
- ~~(2) "Operator" means any person who owns, leases, or manages a business operating a tanning facility.~~
- ~~(3) "Patron" mean any person who enters a tanning facility with the intent to use a tanning device.~~
- ~~(4) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease when used at the health care professional's health care office or clinic.~~
- ~~(5)(a) "Tanning device" means equipment to which a tanning facility provides access that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for tanning of the skin, including:~~
  - ~~(i) a sunlamp; and~~
  - ~~(ii) a tanning booth or bed.~~
- ~~(b) "Tanning device" does not include a phototherapy device.~~
- ~~(6) "Tanning Facility" means a commercial location, place, area, structure, or business that provides access to a tanning device.~~
- ~~(7) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period of time.~~
- ~~(8) "Ultraviolet Radiation" means electromagnetic radiation that has a wave length interval of 200 nanometers to 400 nanometers in air.~~

**R392-700-4. Warning Sign Placement.**

- ~~(1) The operator of a tanning facility shall post a warning sign that meets the requirements of this rule in a conspicuous location that is readily visible to a person about to use a tanning device.~~
- ~~(a) The operator shall place the warning sign so that all patrons are alerted to the hazard and informed before being exposed to UV radiation. At a minimum, the operator shall post the warning sign:~~
  - ~~(i) in the line of sight of a person presenting at the reception or sales counter and no more than 10 feet from where a patron checks in or pays for the tanning session; and~~
  - ~~(ii) on a vertical surface in the reception area so that the top border of the writing is between five and six feet above the patron floor level at the reception or sales counter area.~~

**R392-700-5. Warning Sign Requirements.**

- ~~(1) The warning sign required by R392-700-5 shall meet the requirements of this section. An Adobe Acrobat Portable Document Format, .pdf, file that meets the requirements of this section is available from the Department or the local health department.~~
- ~~(2) The sign shall be in a landscape format 11 inches high by 17 inches wide on a white background.~~
- ~~(3) All lettering shall be in Arial font as produced in Adobe Acrobat. In addition, the letters shall be:~~
  - ~~(a) black in color~~
  - ~~(b) all uppercase~~
  - ~~(c) adequately spaced and not crowded~~

~~(4) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:~~

- ~~(a) be 3.3 centimeters, high and 42 centimeters wide, including a black line border that is 0.16 centimeter wide surrounding the safety orange background;~~
- ~~(b) have the word "WARNING" in capital letters that are 80 points in size (approximately two centimeters high); and~~
- ~~(c) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING"~~

~~(5) The safety alert symbol shall be black with a yellow field.~~

~~(6) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.~~

~~(7) Immediately below the orange panel shall appear the words: "UV RADIATION HEALTH RISK" in letters that are 61 points in size (approximately 1.5 centimeters high) and centered between the vertical margins. The vertical space between the "WARNING" panel and the top of the words "UV RADIATION HEALTH RISK" shall be approximately 1.6 centimeters. The vertical space between the bottom of the words "UV RADIATION HEALTH RISK" and the top of the words of the first bulleted statement required in subsection (9) shall be approximately 1.6 centimeters.~~

~~(8) Beneath the "UV RADIATION HEALTH RISK" line shall appear the body wording of the sign in letters that are 39 points in size (approximately one centimeter high).~~

~~(9) The body of the sign shall be the following four bulleted statements:~~

~~TANNING DEVICES MAY CAUSE SEVERE EYE AND SKIN DAMAGE AND MAY CAUSE CANCER~~

~~TALK TO A DOCTOR IF YOU ARE PREGNANT OR ON ORAL CONTRACEPTIVES OR OTHER DRUGS~~

~~WAIT AT LEAST 48 HRS BEFORE RE TANNING~~

~~REQUIRED FOR ALL PERSONS UNDER 18 YEARS FOR EACH TANNING SESSION: IN PERSON WRITTEN CONSENT BY PARENT OR LEGAL GUARDIAN OR PHYSICIAN'S WRITTEN ORDER~~

~~(10) The vertical spacing between each of the bulleted statements shall be approximately 1.6 centimeters. The margins to the right and left of the bulleted statements shall be no less than 4.4 centimeters.~~

~~(11) The vertical spacing between the last bulleted statement and the bottom margin of the paper shall be no less than two centimeters.~~

~~(12) Local health departments may add additional warning requirements that are applicable to all patrons of all tanning facilities.~~

**R392-700-6. Written Health Risk Warning and Signed Consent.**

~~(1) It is unlawful for any operator of a tanning facility to allow a person younger than 18 years old (hereinafter "minor") to use a tanning device, unless the person either:~~

~~(a) has a written order from a physician as a medical treatment that includes the frequency and duration of tanning sessions; or~~

~~(b) at each time of use is accompanied at the tanning facility by a parent or legal guardian who signs a written consent form authorizing the minor to use the tanning device (the parent or legal guardian is not required to remain at the facility for the duration of the use).~~

~~(2) The operator shall not allow a minor to exceed a physician's order for tanning in either frequency or duration of the tanning sessions.~~

~~(3) The consent form for use of a tanning device by a minor shall conform to the Utah Department of Health Tanning Consent Form, July 2012, which is incorporated by reference.~~

~~(4) Before allowing a patron to use a tanning device, the operator shall require the patron to provide proof of age.~~

~~(5) The operator or designee shall not allow any person to use a tanning device without providing the information listed under (6) to the patron (or parent or legal guardian in the case of a minor).~~

~~(6) Before allowing any patron to use a tanning device, the operator shall upon a patron's initial visit to the tanning facility and annually thereafter:~~

~~(a) provide the patron (or parent or legal guardian in the case of a minor) a written paper health risk warning notice containing the health risk information in subsection (7);~~

~~(b) provide the patron (or parent or legal guardian in the case of a minor) an opportunity to read the notice and ask questions;~~

~~(c) obtain the patron's (or parent's or legal guardian's in the case of a minor) dated signature signifying that the patron (or parent or legal guardian in the case of a minor) has read and understands the notice;~~

~~(d) give the patron (or parent or legal guardian in the case of a minor) a copy of the notice.~~

~~(7) The notice required in subsection (3) shall include the following:~~

~~(a) a representative list of potential photosensitizing drugs and agents and the importance of consulting a physician before tanning if the patron is taking certain medicines, has a history of skin problems, is pregnant, or is sensitive to sunlight;~~

~~(b) information regarding potential negative health effects related to ultraviolet exposure including:~~

~~(i) the increased risk of skin cancer and increased risk for those patrons with health problems who sunburn easily, have a family history of melanoma, or often get cold sores;~~

~~(ii) the increased risk of skin thinning, wrinkling, and premature aging;~~

~~(iii) the possible adverse effect on some viral conditions or medical condition, such as lupus when using a tanning device.~~

~~(c) information on how to determine skin sensitivity and information on how different skin types respond to the tanning facilities different tanning devices and the importance of adhering to the time limit the manufacturer recommends for each skin type;~~

~~(d) an explanation of Ultraviolet A (UVA) and Ultraviolet B (UVB) light's effect on the body, the need to use proper protective eye wear with both UV A and UV B systems, and that closing the eyes is not sufficient to prevent possible eye damage;~~

~~(e) information on the capacity of devices, including proper exposure times and intensity;~~

~~(f) information on the risk of tanning too frequently and on over exposure including advice to space tanning sessions 48 hours apart and information on how long it takes before skin burns may develop;~~

~~(g) the importance of the use of protective eye wear including the possibility of eye damage if the eye wear is not used and the tanning device's recommendations on how to properly use eye wear while using the tanning device;~~

~~(h) information that tanning may be inadvisable during pregnancy; and~~

~~(i) other relevant medical information as determined by the local health department, but at a minimum, the local health department contact information to enable the patron to obtain additional information regarding skin cancer.~~

~~(8) The operator shall retain the signed patron notices at the tanning facility and make them readily available for inspection by the Department and local health department.~~

~~(9) The operator shall provide a separate enclosed area for each tanning device that ensures patron safety and privacy.~~

~~(10) The operator shall ensure that only one person enters tanning area during a tanning session.~~

~~(11) The operator shall not allow an animal, except for a service animal, to be in a tanning area during a tanning session. The operator shall ensure that service animals allowed in tanning areas be provided eye protection from UV exposure.~~

### **R392-700-7. Tanning Devices.**

~~(1) A tanning facility may use only commercially available tanning devices manufactured and certified in compliance with 21 CFR 801.4, 21 CFR 1010.2 and 1010.3, and 21 CFR 1040.20.~~

~~(a) The operator shall follow all manufacturer safety instructions applicable to each tanning device.~~

~~(b) The operator shall not:~~

~~(i) operate any tanning device that has an ineffective or inoperable timing device or for which the timing device is missing;~~

~~(ii) exceed the manufacturer's maximum recommended exposure time; or~~

~~(iii) exceed the exposure time recommended by the manufacturer in compliance with 21 CFR 1040.20(d)(1)(iv).~~

~~(3) The operator shall maintain at the tanning facility the manufacturer's operating instructions, exposure recommendations, and safety instructions for each tanning device.~~

~~(4) The operator shall centrally install and locate the timing device controls for each tanning device so that a patron may not set or reset the exposure time on any tanning device.~~

~~(5) The operator shall control the temperature of the consumer contact surfaces of a tanning device and the surrounding area so that it will not exceed 100 degrees Fahrenheit.~~

~~(6) The operator shall maintain the tanning devices in good repair.~~

~~(7) The operator shall provide physical barriers to protect patrons from possible injury which may be induced by touching or breaking tanning equipment lamps.~~

~~(8) The operator shall provide physical barriers or other methods, such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the patron's skin.~~

~~(9) The operator shall replace defective or burned out lamps or filters with lamps and filters that are clearly identified by brand and model designation by the replacement lamp by the lamp manufacturer. The operator shall maintain lamp manufacturer's labeling and user instructions at the facility that demonstrate the equivalence of any replacement lamp or filter.~~

~~(10) An operator shall not advertise or promote the use of any tanning equipment using wording such as "safe," "safe tanning," "no harmful rays," "no adverse effect," "free from risk," or similar wording or concept.~~

~~(11) The operator shall track each patron's usage to ensure that a patron does not use a tanning device more frequently than once each calendar day or in excess of the manufacturer's recommended exposure.~~

~~(12) The tanning device shall allow each patron to exit the tanning device without assistance from the operator.~~

~~(13) The operator shall assess each patron's skin type and sensitivity and consider the intensity of the radiation output of the tanning devices in the tanning facility when assigning a patron to use a particular tanning device.~~

**R392-700-8. Protective Eye Wear.**

~~Prior to each tanning session, the operator shall offer protective eye wear to each patron, instruct the patron on proper use and the importance of proper use of eye wear, and notify the patron of possible damage that might occur to the patron if the patron does not wear it. Protective eye wear shall be eye wear that is supplied by the manufacturer for use with the tanning device or that is the equivalent to the protective eye wear supplied by the manufacturer.~~

**R392-700-9. Tanning Physical Facilities.**

~~(1) The operator shall provide a restroom that includes a flushing toilet and a hand washing sink with hot and cold running water accessible to patrons at each tanning facility. The operator shall ensure that tanning facility floors and walls in the toilet rooms and hand washing areas are constructed of smooth, non-absorbent material.~~

~~(2) The operator shall ensure that all areas of the tanning facility and temporary tanning facility are properly ventilated. The internal ambient air temperature of the facility shall not exceed 85 degrees F.~~

~~(3) The operator shall ensure that all rooms of a tanning facility are capable of being illuminated to allow for proper cleaning and sanitizing.~~

~~(4) To prevent patron slip injury, the operator shall ensure that the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.~~

**R392-700-10. Tanning Facility Sanitation.**

~~(1) The operator shall maintain in good repair and in a sanitary condition all portions of the tanning facility, including wall, floors, ceilings, and equipment.~~

~~(2) The operator shall clean and sanitize before each use, all:~~

- ~~(a) reusable protective eye wear;~~
- ~~(b) body contact surfaces of the tanning device; and~~
- ~~(c) body contact surfaces of the tanning booth, including all seating surfaces and door knobs.~~

~~(3) The operator shall clean the items in subsection (2) using a detergent or other agent able to emulsify oils and hold dirt in suspension using a concentration as indicated by the detergent or other agent manufacturer's use directions included on the product labeling. The operator shall sanitize the items in subsection (2) with a chlorine sanitizer or a quaternary ammonia compound using a concentration as indicated by the sanitizer or compound manufacturer's use directions included on the product labeling.~~

~~(4) If the operator cleans the items in a separate process from sanitizing the items, the operator shall clean the items prior to sanitizing them. The operator may use a single product to both clean and sanitize if that product meets the requirements of subsection (3) for the cleaning and sanitizing of the items in subsection (2).~~

~~(5) The operator shall ensure that restroom facilities are maintained in a clean and sanitary condition. The operator shall provide hand soap and single use hand drying towels or a hand drying mechanism for patron use.~~

~~(6) The operator shall clean and sanitize towels or other linens after each use.~~

**R392-700-11. Permit Requirements.**

~~(1) A tanning facility may not operate in Utah unless it has first obtained a permit to operate from the local health department with jurisdiction.~~

~~(2) In order to obtain a permit, the facility must fill out the required local health department form, submit the form to the local~~

~~health department, and pay the associated fee. A permit, unless revoked, is good for one year.~~

~~(3) Before the facility is eligible for a permit, the tanning facility operator must demonstrate to the local health department that the facility can meet the tanning physical facility requirements, warning sign requirements, and the tanning device requirements in this rule. The tanning facility operator must also demonstrate that the facility has the systems in place to meet the written consent requirements, information notification requirements, eye wear requirements, and operational requirements in this rule.~~

~~(4) The tanning facility operator must be able to demonstrate to the local health department initially and upon subsequent inspections sufficient knowledge of safe operation of the tanning device in accordance with manufacturers recommendations.~~

**R392-700-12. Enforcement and Penalties.**

~~A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor, and revocation of the permit to operate. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to a civil penalty as provided in Section 26-23-6.]~~

**R392-700. Indoor Tanning Facility Sanitation.****R392-700-1. Authority and Purpose.**

~~(1) This rule is authorized by Sections 26-1-5, 26-1-30, 26-15-2 and 26-15-13.~~

~~(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of an indoor tanning facility, as defined by this rule, and provides for the prevention and control of hazards associated with indoor tanning that are likely to adversely affect public health and wellness including risk factors to injury, sickness, death, disability, and the spread of disease.~~

**R392-700-2. Applicability.**

~~This rule applies to a tanning facility where a member of the public is provided access to a tanning device. This rule does not apply to private use of a tanning device when operated exclusively for non-commercial use.~~

**R392-700-3. Definitions.**

~~As used in this rule:~~

~~(1) "Clean" means the condition of an object visibly free from dirt, soil stain, or other materials not intended to be a part of the object.~~

~~(2) "Department" means the Utah Department of Health.~~

~~(3) "Guardian" means the parent of a minor, or a person who has qualified as a guardian of a minor pursuant to Title 75, Chapter 5, Part 2, Guardians of Minors.~~

~~(4) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).~~

~~(5) "Local health officer" means the health officer of the local health department having jurisdiction or the local health officer's designated representative.~~

~~(6) "Minor" means a person under 18 years of age.~~

~~(7) "Operator" means any person who, whether permitted or not, controls, operates, owns, or manages a tanning facility as defined, or any individual who has been designated by the operator as the person in charge.~~

~~(8) "Patron" means any person who enters a tanning facility with the intent to use a tanning device. In Section R392-700-5, the term "patron" includes a parent or guardian in the case of a minor.~~

~~(9) "Phototherapy device" has the same meaning as provided in Subsection 26-15-13(1)(b).~~

## NOTICES OF PROPOSED RULES

(10) "Tanning device" has the same meaning as provided in Subsection 26-15-13(1)(c).

(11) "Tanning facility" has the same meaning as provided in Subsection 26-15-13(1)(d).

(12) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period.

(13) "Ultraviolet radiation" means electromagnetic radiation that has a wavelength interval of 200 nanometers to 400 nanometers in air.

### **R392-700-4. Warning Sign.**

(1)(a) The operator shall post a warning sign that meets the requirements of Subsection (2) in a conspicuous location that is readily visible to a person who intends to use a tanning device.

(b) The operator shall place the warning sign so that the patron is alerted to the hazard and informed before being exposed to UV radiation.

(c) At a minimum, the operator shall post the warning sign:

(i) in the line of sight of a person presenting at the reception or sales counter and no more than 10 feet from where a patron checks in or pays for the tanning session; and

(ii) on a vertical surface in the reception area so that the top border of the writing is between five and six feet above the floor level at the reception or sales counter area.

(2) The operator shall ensure that:

(a) the warning sign required in Subsection (1) is in a landscape format 11 inches high by 17 inches wide on a white background;

(b) warning sign lettering is in Arial font as produced in Adobe Acrobat, and the letters are:

(i) black in color;

(ii) uppercase; and

(iii) adequately spaced and not crowded;

(c) the top of the sign includes a panel that is safety orange in color and:

(i) is 3.3 centimeters high and 42 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety orange background;

(ii) includes the word, "warning" in capital letters that are 80 points in size; and

(iii) has an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word, "warning";

(d) the safety alert symbol is black with a yellow field;

(e) the word, "warning" and the symbol are vertically and horizontally centered within the orange panel;

(f) immediately below the orange panel appear the words, "UV radiation health risk" in letters that are 61 points in size and centered between the vertical margins;

(g) the vertical space between the "warning" panel and the top of the words, "UV radiation health risk" is about 1.6 centimeters;

(h) the vertical space between the bottom of the words, "UV radiation health risk" and the top of the words of the first bulleted statement required in Subsection (2)(i) are about 1.6 centimeters;

(i) beneath the "UV radiation health risk" line appear the body wording of the sign in letters that are 39 points in size;

(j) the body of the sign includes the following four statements:

(i) "Tanning devices may cause severe eye and skin damage, and may cause cancer;"

(ii) "Talk to a doctor if you are pregnant or on oral contraceptives or other drugs;"

(iii) "Wait at least 48 hours before tanning again;" and

(iv) "In person written consent by parent or legal guardian or physician's written order is required for any person under 18 years for each tanning session;"

(k) the vertical spacing between each of the bulleted statements is about 1.6 centimeters;

(l) the margins to the right and left of the bulleted statements are no less than 4.4 centimeters; and

(m) the vertical spacing between the last bulleted statement and the bottom margin of the paper is no less than two centimeters.

(3) A local health officer may add additional warning requirements that apply to each patron.

### **R392-700-5. Written Health Risk Warning Notice, and Signed Consent.**

(1) The operator shall prohibit a minor from using a tanning device except if the minor:

(a) has a written order from a physician as a medical treatment that includes the frequency and duration of tanning sessions; or

(b) at each time of use, is accompanied at the tanning facility by a parent or guardian who signs a written consent form authorizing the minor to use the tanning device.

(2) The parent or guardian of a minor is not required to remain at the tanning facility during the minor's use of a tanning device.

(3) The operator may not allow a minor to exceed a physician's order for tanning in either frequency or duration of a tanning session.

(4) The consent form for use of a tanning device by a minor shall conform to the Department's Tanning Consent Form, July 2012, which is incorporated by reference.

(5) Before using a tanning device, the patron shall provide proof of age to the operator.

(6) Before the patron's use of a tanning device, the operator shall provide the patron with the information listed under Subsection (7).

(7) Upon a patron's initial visit to the tanning facility and annually thereafter, the operator shall:

(a) provide the patron with a written paper health risk warning notice containing the health risk information listed in Subsection (8);

(b) provide the patron an opportunity to read the notice and ask questions;

(c) have the patron sign and date the notice to signify that the patron has read and understands; and

(d) give the patron a copy of the notice.

(8) The health risk warning notice required in subsection (7)(a) shall include:

(a) a representative list of potential photosensitizing drugs and agents;

(b) a statement on the importance of consulting a physician before tanning if the patron:

(i) is taking certain medicines;

(ii) has a history of skin problems;

(iii) is pregnant; or

(iv) is sensitive to sunlight;

(c) information regarding potential negative health effects related to ultraviolet exposure including:

(i) the increased risk of skin cancer and increased risk for patrons with:

(A) health problems who sunburn easily;

(B) a family history of melanoma; or

(C) frequent cold sores;

(ii) the increased risk of skin thinning, wrinkling, and premature aging; and

(iii) the possible adverse effect on some viral or medical conditions, like lupus, when using a tanning device;

(d) information on:

(i) how to determine skin sensitivity;

(ii) how different skin types respond to different tanning devices;

(iii) the importance of adhering to the time limit the manufacturer recommends for each skin type;

(iv) how ultraviolet-A (UVA) and ultraviolet-B (UVB) affect the human body;

(v) the required use of proper protective eyewear with both UVA and UVB systems, and a statement that closing the eyes is not sufficient to prevent possible eye damage;

(vi) the use of protective eyewear including the possibility of eye damage if the eyewear is not used;

(vii) the tanning device manufacturer's recommendations on how to properly use eyewear while using the tanning device;

(viii) the capacity of each tanning device, including proper exposure time and intensity;

(ix) the risk of tanning too frequently and on over exposure including advice to space tanning sessions 48 hours apart;

(x) the typical amount of time for a sunburn to develop;

(xi) the inadvisability of tanning during pregnancy; and

(xii) additional relevant medical considerations as determined by the local health officer; and

(e) how to contact the local health department to get additional information.

(9) The operator shall keep each signed patron consent form at the tanning facility and shall make the forms readily available for review by the local health officer upon request.

#### **R392-700-6. Tanning Devices.**

(1)(a) The operator shall use only commercially available tanning devices manufactured and certified in compliance with 21 CFR 801.4, 21 CFR 1010.2, 21 CFR 1010.3, and 21 CFR 1040.20.

(b) The operator shall follow the manufacturer's safety instructions applicable to each tanning device.

(2) The operator shall:

(a) maintain at the tanning facility the manufacturer's operating instructions, exposure recommendations, and safety instructions for each tanning device;

(b) centrally install and locate the timing device controls for each tanning device so that a patron may not set or reset the exposure time on any tanning device;

(c) control the temperature of each body contact surface of a tanning device and the surrounding area to ensure that the surface does not exceed 100 degrees Fahrenheit;

(d) maintain each tanning device in good repair;

(e) provide a physical barrier to protect a patron from possible injury that could occur by touching or breaking a tanning device lamp;

(f) provide a physical barrier or other method, such as a handrail or floor marking to show the patron the proper exposure distance between an ultraviolet lamp and the patron's skin;

(g) replace each defective or burned-out lamp or filter with a lamp or filter that is clearly identified by brand and model designation by the lamp or filter manufacturer;

(h) maintain lamp manufacturer's labeling and user instructions at the tanning facility that demonstrate the compatibility equivalence of any replacement lamp or filter;

(i) track each patron's usage to ensure that a patron does not use a tanning device more frequently than once each calendar day or in excess of the manufacturer's recommended exposure;

(j) ensure that each tanning device allows a patron to exit the tanning device without assistance from the operator;

(k) assess each patron's skin type and sensitivity and consider the intensity of the radiation output of the tanning devices in the tanning facility when assigning a patron to use a particular tanning device;

(l) provide a separate enclosed tanning area for each tanning device that ensures patron safety and privacy; and

(m) ensure that only one person enters an enclosed tanning area during a tanning session;

(3) The operator may not:

(a) operate any tanning device that has an ineffective or inoperable timing device or for which the timing device is missing;

(b) exceed the manufacturer's maximum recommended exposure time;

(c) exceed the exposure time recommended by the manufacturer in compliance with 21 CFR 1040.20(d)(1)(iv);

(d) advertise or promote the use of any tanning equipment using wording such as "safe," "safe tanning," "no harmful rays," "no adverse effect," "free from risk," or similar wording or concept; and

(e) allow an animal, except for a service animal, to be in an enclosed tanning area during a tanning session.

#### **R392-700-7. Protective Eyewear.**

The operator shall ensure that:

(1) protective eyewear is offered to each patron before each tanning session;

(2) each patron is instructed on proper use of protective eyewear and warned of possible damage to the eyes if the protective eyewear is not worn;

(3) provided protective eyewear is compatible with the tanning device being used;

(4) reusable protective eyewear is cleaned and disinfected with an EPA registered disinfectant after each use; and

(5) a service animal allowed in an enclosed tanning area is provided with protective eyewear.

#### **R392-700-8. Construction and Maintenance Requirements.**

The operator shall ensure that:

(1) a restroom is provided for patron use that includes:

(a) a flushing toilet;

(b) a handwashing sink with hot and cold running water; and

(c) hand soap and single use hand drying towels or a hand drying mechanism;

(2) each floor and wall in the toilet room and handwashing area is constructed of smooth, non-absorbent material;

(3) each tanning facility area is properly ventilated;

(4) the internal ambient air temperature of the facility does not exceed 85 degrees F;

(5) each tanning facility room is capable of being illuminated to allow for proper cleaning and sanitizing; and

(6) the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.

#### **R392-700-9. Tanning Facility Sanitation.**

(1) The operator shall maintain walls, floors, ceilings, restrooms, and equipment of a tanning facility in good repair and in a clean and sanitary condition.

(2) The operator shall clean each body contact surface of a tanning device, including each seating surface and doorknob:

(a) before each use;

(b) using a detergent or other agent able to emulsify oils and hold dirt in suspension; and

## NOTICES OF PROPOSED RULES

(c) using a concentration as indicated by the chemical manufacturer's use directions included on the product label;

(3) The operator shall sanitize each body contact surface of the tanning device, including each seating surface and doorknob:

(a) before each use;

(b) with a chlorine sanitizer or a quaternary ammonia compound; and

(c) using a concentration as indicated by the chemical manufacturer's use directions included on the product label.

(4) The operator may use a single product to both clean and sanitize if that product meets the requirements of Subsections (2) and (3) for the cleaning and sanitizing of body contact surfaces of the tanning device.

(e) If the operator cleans a body contact surface of a tanning device in a separate process from sanitizing the surface, the operator shall clean the surface before sanitizing it.

(5) The operator shall wash and dry towels and other linens between each use.

### **R392-700-10. Permit Requirements.**

(1) A tanning facility may not operate unless the operator has first obtained a permit to operate from the local health department having jurisdiction.

(2) To get a permit, the operator shall complete an application provided by the local health department and pay the associated fee. A permit, unless revoked, is valid for one year.

(3) Before the tanning facility is eligible for a permit, the operator shall demonstrate to the local health officer that:

(a) the tanning facility can meet the requirements of Sections R392-700-4, R392-700-6, and R392-700-8; and

(b) the facility has the systems in place to meet the requirements of Sections R392-700-5, R392-700-7, and R392-700-9.

(4) The operator shall be able to demonstrate to the local health officer, initially and upon subsequent inspections, that the operator has sufficient knowledge to safely operate each tanning device in accordance with manufacturer's directions.

### **R392-700-11. Enforcement and Penalties.**

(1) A person who violates a requirement of this rule that is also a requirement of Section 26-15-13 may be subject to a class C misdemeanor, and revocation of the permit described in Section R392-700-10.

(2) A person who violates a requirement of this rule that is not also a requirement of Section 26-15-13 is subject to a civil penalty as provided in Section 26-23-6.

### **R392-700-12. Severability.**

If any provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision of the application.

**KEY:** tanning beds, ~~salons~~indoor tanning, sanitation, ultraviolet light safety

**Date of Last Change:** 2022~~October 15, 2012~~

**Notice of Continuation:** January 16, 2018

**Authorizing, and Implemented or Interpreted Law:** 26-15-2; 26-15-13; 26-1-5; 26-1-30

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** **R432-152**

**Filing ID**  
**54175**

### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	4th Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
Joel Hoffman	801-273-2804	jhoffman@utah.gov

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

### General Information

#### **2. Rule or section catchline:**

R432-152. Mental Retardation Facility

#### **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 comply with the settlement agreement with the Disability Law Center (DLC). The DLC filed a lawsuit against the Department of Health (Department), regarding Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID's), several years ago. These changes satisfy the provisions of the settlement agreement for individuals residing in ICF/IID's.

#### **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 ensures ICF/IID's employees receive specialized training regarding the care of children and youth with intellectual disabilities when there are individuals under 22 years of age in the facility. The facility shall not admit clients under the age of 22 years without the expressed permission of the Department. In addition, no one under the age of 22 years shall live in the same



room with more than one individual; or with individuals over the age of 22 years, unless they are members of the individual's immediate family. Outdated language and formatting issues were also modified in this amendment.

The Health Facility Committee reviewed and approved this rule amendment on 05/12/2021.

### Fiscal Information

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

##### A) State budget:

State government small health care facility survey process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected.

##### B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures. Small health care facilities are regulated by the state health department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small business Small Health Care Facilities. There are 15 ICF/IID's, as determined by the Department's licensing data system. (North American Industry Classification System (NAICS) codes used – Residential Mental Health Facilities 6232, reports 35 small businesses). None of the Department licensed ICF/IID's are listed as a small business.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small business Small Health Care Facilities. There are 15 ICF/IID's, as determined by the Department's licensing data system. (NAICS) codes used – Residential Mental Health Facilities 6232, reports 33 non-small businesses). Six of the Department licensed ICF/IID's are listed as non-small businesses. Employee training is currently provided in these facilities and the additional of specialized training to the facilities that serve individuals under 22 years of age, would be negligible. In addition, no cost would be associated with room placement requirements for individuals under 22 years of age.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment adds employee training requirements and room placement requirements for individuals residing in an ICF/IID and therefore, would not add cost for persons, businesses, or local government entities.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment adds employee training requirements and room placement requirements for individuals residing in an ICF/IID and therefore, would not add cost for persons, businesses, or local government entities.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for either small business or non-small business. Employee training is currently provided in these facilities and the addition of specialized training to the facilities that serve individuals under 22 years of age, would be negligible. No cost would be associated with room placement requirements for individuals under 22 years of age. 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

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

## NOTICES OF PROPOSED RULES

<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.			

## Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Title 26, Chapter 21		

## Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	01/14/2022

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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

<b>Agency head or designee, and title:</b>	Nate Checketts, Executive Director	<b>Date:</b>	120/01/2021
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### R432. Health, Family Health and Preparedness, Licensing.

#### R432-152. ~~[Mental Retardation Facility]~~ Intermediate Care Facility for Individuals with Intellectual Disabilities.

##### R432-152-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.

##### R432-152-2. Purpose.

It is the purpose of the rule to meet the intent of the Legislature as expressed in Section 26-21-13.5.

##### R432-152-3. Definitions.

~~[(1)]~~ The definitions in Section R432-1-3 apply to this rule. In addition, the following ~~[special]~~ definitions apply to this rule:

~~[(a)]~~ "Administrator" means the person in charge of the daily operations of the Intermediate Care Facility for Individuals with Intellectual Disabilities. ~~["Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.]~~

~~[(b)]~~ "Developmental Period" means the period between conception and the 18th birthday.

~~[(e)]~~ "Direct Care Staff" means personnel who provide care, training, treatment or supervision of residents.

~~[(d)]~~ "[QMRP]QIDP" means a Qualified ~~[Mental Retardation]~~ Intellectual Disabilities Professional as defined in 42 CFR 483.403(a) ~~[, 1997]~~.

~~(5)~~ "Significantly Sub-average General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

##### R432-152-4. Licensure.

These rules apply to ~~[all]~~ Intermediate Care Facilities for ~~[the Mentally Retarded]~~ Individuals with Intellectual Disabilities licensed ~~[prior to]~~ before July 1, 1990, pursuant to Section 26-21-13.5.

##### R432-152-5. Construction and Physical Environment.

Intermediate Care Facilities for ~~[the —Mentally Retarded]~~ Individuals with Intellectual Disabilities shall be constructed and maintained in accordance with Rule R432-5 Nursing Facility Construction.

##### R432-152-6. Governing Body and Management.

(1) The licensee shall identify an individual or group to constitute the governing body of the facility.

(2) The governing body shall:

(a) exercise general policy, budget~~[,]~~ and operating direction over the facility; and

(b) set the qualifications~~[, in addition to the requirements of Title 58, Chapter 15,]~~ for the administrator of the facility.

(3) The licensee shall comply with ~~[all—]~~ applicable ~~[provisions of—]~~ federal, state and local laws, regulations and codes pertaining to health, safety~~[,]~~ and sanitation.

(4) The licensee shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator. The administrator shall supervise no more than one licensed ~~[nursing care facility or mental retardation facility]~~ Intermediate Care Facility for Individuals with Intellectual Disabilities.

(a) The administrator shall be on the premises of the facility ~~[a sufficient number of]~~ enough hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.

(b) The administrator shall designate, in writing, the name and title of a person to act as administrator in any temporary absence of the administrator. This designated person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review. The job description ~~[must]~~ shall include at least the following responsibilities:

(a) complete, submit~~;~~ and file ~~[all]~~ records and reports required by the Department;

(b) function as liaison between the licensee, qualified ~~[mental retardation]~~ intellectual disabilities professional~~;~~ and other supervisory staff of the facility;

(c) respond appropriately to recommendations made by the facility committees;

(d) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(e) implement policies and procedures for the operation of the facility;

(f) hire and maintain the required number of licensed and non-licensed staff, as specified in these rules, to meet the needs of clients;

(g) maintain facility staffing records for at least the preceding 12 months;

(h) secure and update contracts for required professional and other services not provided directly by the facility;

(i) verify ~~[all]~~ required licenses and permits of staff and consultants at the time of hire or effective date of contract; and

(j) review ~~[all]~~ incident and accident reports and take appropriate action.

(6) The administrator, ~~[QMRP]~~ Qualified Intellectual Disabilities Professional~~;~~ and facility department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(a) The administrator or designee shall conduct and document periodic employee performance evaluations.

(b) ~~[All]~~ Personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(7) The administrator shall establish policies and procedures for health screening that meet Subsection R432-150-10~~-(4)~~.

#### **R432-152-7. Client Rights.**

(1) The administrator is responsible to ensure the rights of ~~[all]~~ clients. The administrator or designee shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, voice grievances, and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination~~;~~ or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary ~~[drugs]~~ medications and physical restraints and are provided active treatment to reduce dependency on ~~[drugs]~~ medications and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to ~~[retain]~~ keep and use appropriate personal possessions and clothing, and ensure that each client is dressed in ~~[his or her]~~ their own clothing each day; and

(n) permit a married couple ~~[both of whom reside in the facility]~~ to reside together as a couple.

(2) The administrator shall establish and maintain a system that assures a ~~[full and]~~ complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(a) The client's financial record shall be available on request to the client or client's legal guardian.

(b) The ~~administrator~~ licensee ~~must~~ shall ensure that ~~[all]~~ monies entrusted to the facility on behalf of clients are kept in the facility or are deposited within five days of receipt in an insured interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah.

(c) When the amount of a client's money entrusted to the facility exceeds \$150, ~~[all]~~ money in excess of \$150 ~~[must]~~ shall be deposited in an interest-bearing account ~~[as specified in R432-152-7(2)(b) above]~~.

(d) Upon discharge of a client, ~~[all]~~ money and valuables of that client ~~[which]~~ that have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility ~~[must]~~ shall be surrendered upon demand and those kept in an interest-bearing account ~~[must]~~ shall be obtained and surrendered to the client in a timely manner.

(e) Within 30 days following the death of a client, except in a medical examiner case, ~~[all]~~ money and valuables of that client ~~[which]~~ that have been entrusted to the licensee ~~[must]~~ shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. If a client dies without a representative or known heirs, the licensee ~~[must]~~ shall immediately notify in writing the local probate court ~~[and the Department]~~.

## NOTICES OF PROPOSED RULES

(3) The administrator ~~[must]~~shall promote communication~~[;]~~ and encourage participation of clients, parents and guardians in the active treatment process. Facility staff shall:

(a) promote participation of parents ~~[(if the client is a minor)]~~ and legal guardians, ~~if the client is a minor,~~ in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from clients' families and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips~~[;]~~ or vacations; and

(f) ~~[notify]~~promptly ~~notify~~ the client's parents or guardian of any significant incidents~~[;]~~ or changes in the client's condition including~~[;]~~ ~~but not limited to:~~ serious illness, accident, death, abuse~~[;]~~ or unauthorized absence.

(4) The administrator ~~[is responsible to]~~shall develop and implement written policies and procedures that prohibit abuse, neglect~~[;]~~ or exploitation of clients.

(a) Any person, including a social worker, physician, psychologist, nurse, teacher~~[;]~~ or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect~~[;]~~ or exploitation, shall immediately notify the nearest peace officer, law enforcement agency~~[;]~~ or local office of Adult Protective Services pursuant to Section 62A-3-302.

(i) The administrator ~~[must]~~shall document that ~~[all]~~alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(ii) The administrator shall~~[is responsible to]~~ report the results of ~~[all]~~investigations within five working days of the incident. If the alleged violation is verified, the administrator shall take appropriate corrective action.

(iii) The administrator or designee shall plan and document annual in-service training of ~~[all]~~staff on the reporting requirements of suspected abuse, neglect~~[;]~~ and exploitation.

(b) A licensee shall not retaliate, discipline~~[;]~~ or terminate an employee who reports suspected abuse, neglect~~[;]~~ or exploitation for that reason alone.

(5) Clients under the age of 22 years shall not live in the same room with:

(a) more than one individual; or

(b) individuals over the age of 22 years, unless they are members of the individual's immediate family.

(6) The administrator shall develop written policies and procedures to implement Subsection R432-200-7(5) and shall obtain written approval from the Department for any exceptions.

### **R432-152-8. Facility Staffing.**

(1) A Qualified ~~[Mental Retardation]~~Intellectual Disabilities Professional ~~[must]~~shall integrate, coordinate and monitor each client's active treatment program.

(2) Each client shall receive the professional services required to implement the active treatment program defined by each client's individual program plan.

(a) Professional program staff shall work directly with clients and with other staff who work with clients.

(b) The licensee shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(c) Professional program staff shall participate in on~~[-]~~going staff development and training of other staff members.

(d) Professional program staff ~~[must]~~shall be licensed and provide professional services in accordance with each respective professional practice act as outlined in Title 58 Occupations and Professions. A copy of the current license, registration or certificate ~~[must]~~shall be posted or maintained in employee personnel files.

(e) Those professional program staff designated as a human services professional who do not fall under the jurisdiction of ~~[state]~~ licensure, certification~~[;]~~ or registration requirements~~[;]~~ specified in Title 58 Occupations and Professions, shall have at least a bachelor's degree in a human services field~~[;]~~ ~~including, but not limited to: sociology, special education, rehabilitation counseling, and psychology~~.

(f) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of Subsection R432-152-8(2)(d) are not required:

(i) except for ~~[q]~~Qualified ~~[mental retardation]~~Intellectual Disabilities ~~[p]~~Professionals;

(ii) except for the requirements of Subsection ~~[R432-152-8]~~(2)(b) of this section ~~[concerning the facility's provision of]~~requiring enough qualified professional program staff; and

(iii) as otherwise specified by ~~[State]~~licensure and certification requirements.

(3) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing as follows:

(a) for clients for whom a physician has ordered a medical care plan;

(b) for clients who are aggressive, assaultive or are security risks;

(c) when there are more than 16 clients; or

(d) with each unit of ~~[sixteen]~~16 or fewer clients within a multi-unit building.

(4) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness and to handle emergencies in each defined residential living unit housing as follows:

(a) for clients for whom a physician has not ordered a medical care plan;

(b) for clients who are not aggressive, assaultive or security risks; or

(c) with residential living units housing ~~[sixteen]~~16 or fewer clients.

(5) Sufficient support staff ~~[must]~~shall be available so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(6) Clients or volunteers may not perform direct care services for the facility.

(7) The licensee shall employ sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(a) Direct care staff shall meet the following minimum ratios of direct care staff to clients:

(i) for each defined residential living unit serving children under the age of 12, with severe~~[by]~~ and profound~~[by-retarded-clients]~~ intellectual disabilities, clients with severe physical disabilities~~[;]~~ or clients who are aggressive, assaultive~~[;]~~ or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2, ~~[{2.5 hours per client per 24 hour period}{;}]~~;

(ii) for each defined residential living unit serving individuals with moderate~~[by-retarded-clients]~~ intellectual disabilities, the staff to client ratio is 1 to 4, ~~[{2[-0] hours per client per 24 hour period}{;}]~~; and

(iii) for each defined residential living unit serving clients who function within the range of mild ~~[retardation]~~ intellectual disabilities, the staff to client ratio is 1 to 6.4, ~~[{1.25 hours per client per 24 hour period}{;}]~~.

(b) When there are no clients present in the living unit, a responsible staff member shall be available by telephone.

(8) Each employee shall have initial and ongoing training to include the necessary skills and competencies required to meet the clients' developmental, behavioral~~[;]~~ and health needs.

(9) When there are clients under the age of 22 years, each employee shall receive specialized training regarding the care of children and youth with intellectual disabilities.

#### **R432-152-9. Volunteers.**

(1) Volunteers may be included in the daily activities with clients, but may not be included in the staffing plan or staffing ratios.

(2) Volunteers shall be supervised by staff and oriented to client~~[s]~~ rights and the facility's policies and procedures.

#### **R432-152-10. Services Provided Under Agreements with Outside Sources.**

(1) If a service required under this rule is not provided directly, the licensee shall have a written agreement with an outside program, resource~~[;]~~ or service to furnish the necessary service, including emergency and other health care.

(2) The agreement under Subsection (1) shall:

(a) contain the responsibilities, functions, objectives~~[;]~~ and other terms agreed to by both parties; and

(b) ~~[provide that]~~ require the licensee ~~[is]~~ to be responsible for assuring that the outside services meet the standards for quality of services contained in this rule.

(3) If living quarters are not provided in a facility owned by the licensee, the licensee ~~shall be~~ remains directly responsible for the standards relating to physical environment that are specified in Rule R432-5.

#### **R432-152-11. Individual Program Plan.**

(1) An interdisciplinary team shall develop an ~~Each client shall have an~~ individual program plan ~~[developed by an interdisciplinary team]~~ for each client that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in Subsection R432-152-12(4); and

(b) designing programs that meet the client's needs.

(2) Interdisciplinary team meetings shall include the following participants:

(a) representatives of other agencies who may serve the client; and

(b) the client and the client's legal guardian unless participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the

specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by Section R432-152-12, and the planned sequence for dealing with those objectives.

(a) The program objectives shall:

(i) be stated separately, in terms of a single behavioral outcome;

(ii) be assigned projected completion dates;

(iii) be expressed in behavioral terms that provide measurable indices of performance;

(iv) be organized to reflect a developmental progression appropriate to the individual; and

(v) be assigned priorities.

(b) Each written training program designed to implement the objectives in the individual program plan shall specify:

(i) the methods to be used;

(ii) the schedule for use of the method;

(iii) the person responsible for the program;

(iv) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) the inappropriate client behavior, if applicable; and

(vi) ~~[provision for]~~ the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(c) The individual program plan shall ~~[also]~~:

(i) describe relevant interventions to support the individual toward independence;

(ii) identify the location where program strategy information, ~~[which]~~ that shall be accessible to any person responsible for implementation, can be found;

(iii) include, for those clients who lack them, training in personal skills essential for privacy and independence, including toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming~~[;]~~ and communication of basic needs, until it has been demonstrated that the client is developmentally incapable of acquiring them;

(iv) identify mechanical supports, if needed, to achieve proper body position, balance~~[;]~~ or alignment, including the reason for each support, the situations ~~[in which]~~ that each is to be applied, and a schedule for the use of each support;

(v) provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices when~~[ever]~~ possible; and

(vi) include opportunities for client choice and self-management.

(4) The facility shall make available a ~~[A]~~ copy of each client's individual program plan ~~[shall be made available]~~ to ~~[all]~~ relevant staff, staff of other agencies who work with the client or a legal guardian.

(5) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(a) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(b) Staff who work with the client shall implement each client's individual program plan. ~~[E]~~ xcept ~~[for]~~ those facets of the individual program plan that may be implemented only by licensed personnel~~[; each client's individual program plan shall be implemented by all staff who work with the client]~~.

(6) The facility ~~[must]~~shall document, in measurable terms, data and significant events relative to the accomplishment of the criteria specified in individual client program plans.

(7) ~~[The individual program plan shall be reviewed at least by the q]The Qualified [mental retardation]Intellectual Disabilities [p]Professional shall review and revise the individual program plan[and revised as necessary];~~ including situations ~~[in which]that~~ the client:

- (a) has successfully completed an objective or objectives identified in the individual program plan;
- (b) is regressing or losing skills already gained;
- (c) is failing to progress toward identified objectives after reasonable efforts have been made; or
- (d) is being considered for training towards new objectives.

#### **R432-152-12. Comprehensive Functional Assessment.**

(1) Within 30 days after admission, the interdisciplinary team ~~[must]~~shall complete accurate assessments or reassessments as needed to supplement the preliminary evaluation referred to in Subsection R432-152-14(3).

(2) The comprehensive functional assessment in Subsection (1) shall take into consideration the client's age and the implications for active treatment and shall:

- (a) identify the presenting problems and disabilities and, where possible, their causes;
- (b) identify a client's specific developmental strengths;
- (c) identify a client's specific developmental and behavioral management needs;
- (d) identify a client's need for services without regard to the actual availability of the services needed; and
- (e) include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors and independent living skills necessary for a client to be able to function in the community[;] and ~~[as applicable, ]~~vocational skills.

(3) The interdisciplinary team shall annually review the comprehensive functional assessment of each client ~~[shall be reviewed annually by the interdisciplinary team]~~ and updated the plan as needed including the identified assessments[repeating the process] required in Section R432-152-14(3).

#### **R432-152-13. Human Rights Committee.**

(1) The facility shall designate and use a specially constituted committee or committees consisting of members of the facility staff, parents, legal guardians, clients as appropriate, qualified persons who have experience or training in contemporary practices to change inappropriate client behavior[;] and persons with no ownership or controlling interest in the facility to:

- (a) review, approve[;] and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;
- (b) ~~[i]~~ensure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian; and
- (c) review, monitor and make suggestions to the facility about its practices and programs as they relate to ~~[drug]~~medication usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds[;] and any other area that the committee believes need to be addressed.

#### **R432-152-14. Admissions, Transfers, and Discharge.**

(1) The facility may only admit clients who need active treatment services.

(2) The facility shall base its admission decision on a preliminary evaluation of the client. The preliminary evaluation may be conducted or updated by the facility or an outside source and ~~[must]~~shall determine that the facility can provide for the client's needs and that the client is likely to benefit from placement in the facility.

(3) A preliminary evaluation under Subsection (2) shall contain background information as well as current valid assessments of the following:

- (a) functional developmental[;];
- (b) behavioral status[;];
- (c) social status[;]; and
- (d) health and nutritional status.

(4) The facility shall not admit clients under the age of 22 years without express permission of the Department.

(5) Client transfers and discharges ~~[must]~~shall comply with the requirements of Section R432-150-22.

#### **R432-152-15. Client Behavior and Facility Practices.**

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.

(2) The policies and procedures under Subsection (1) shall:

- (a) promote the growth, development and independence of the client;

- (b) address the extent ~~[to which]that~~ client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management to the extent possible;

- (c) specify client conduct to be allowed or not allowed; and

- (d) be available to ~~[all]~~staff, clients, parents of minor children[;] and legal guardians.

(3) To the extent possible, clients shall participate in the formulation of the~~[se]~~ policies and procedures under Subsection (1).

(4) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(5) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior.

- (a) The policies and procedures shall be consistent with the ~~[provisions of]~~Subsection R432-152-15(2).

- (b) The policies and procedures shall:

- (i) specify ~~[all]~~facility-approved interventions to manage inappropriate client behavior;

- (ii) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and

- (iii) ensure, ~~[prior to]before~~ the use of more restrictive techniques, that less restrictive measures have been implemented with the results documented in the client's record.

- (c) The policies and procedures shall address the following:

- (i) the use of time-out rooms;

- (ii) the use of physical restraints;

- (iii) the use of chemical restraints to manage inappropriate behavior;

- (iv) the application of painful or noxious stimuli;

- (v) the staff members who may authorize the use of specified interventions; and

- (vi) a mechanism for monitoring and controlling the use of such interventions.

(d) Interventions to manage inappropriate client behavior shall be employed with safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(e) A facility may not utilize ~~[p.m. or]~~ "as needed" programs to control inappropriate behavior.

(6) A client may be placed in a time-out room ~~[from which]~~ where egress is prevented only if the following conditions are met:

(a) ~~[F]~~ the placement is part of an approved systematic time-out program as required by Subsection R432-152-15(5); ~~[-];~~

(b) ~~[F]~~ the client is under the direct constant visual supervision of designated staff ~~[-];~~

(c) ~~[F]~~ the door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged ~~[-];~~

(d) ~~[P]~~ placement of a client in a time-out room shall not exceed one hour per incident of maladapted behavior ~~[-];~~

(e) ~~[C]~~ clients placed in time-out rooms shall be protected from hazardous conditions including sharp corners and objects, uncovered light fixtures ~~[-];~~ and unprotected electrical outlets ~~[-];~~ and

(f) ~~[F]~~ the facility ~~[must]~~ shall maintain a log for each time-out room.

(7) A facility may ~~[employ]~~ use physical restraints only:

(a) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior ~~[for which]~~ that the restraint is applied for;

(b) as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(c) as a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(8) A facility may apply emergency restraints for initial or extended use for no longer than 12 consecutive hours for the combined initial and extended use time period provided that authorization is obtained as soon as the client is restrained or stable.

(9) A facility may not issue orders for restraint on a standing or as needed basis.

(10) Facility staff ~~[must]~~ shall check clients placed in restraints at least every 30 minutes and maintain documentation of these checks.

(a) Restraints ~~[must]~~ shall be applied to cause the least possible discomfort and may not cause physical injury to the client.

(b) Facility staff ~~[must]~~ shall provide and document opportunity for motion and exercise for a period of not less than 10 minutes during each two hour period ~~[in which]~~ that a restraint is employed.

(c) Barred enclosures shall not be more than three feet in height and shall not have tops.

(11) The facility shall not administer ~~[drugs]~~ medications at a dose that interferes with a client's daily living activities.

(a) The interdisciplinary team shall approve ~~[Drugs]~~ medications used for the control of inappropriate behavior ~~[must be approved by the interdisciplinary team]~~ and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors ~~[for which]~~ that the ~~[drugs]~~ medications are employed for.

(b) ~~[Drugs]~~ Medications used for control of inappropriate behavior shall be:

(i) monitored closely, in conjunction with the physician and the ~~[drug]~~ medication review requirement; and

(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

#### **R432-152-16. Physician Services.**

(1) The facility shall ensure the availability of physician services 24 hours a day.

(a) The physician shall develop, in coordination with facility licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that the client requires 24-hour licensed nursing care.

(b) The care plan shall be integrated into the client's program plan.

(c) Each client requiring a medical care plan of treatment shall be admitted by and remain under the care of a health practitioner licensed to prescribe medical care for the client.

(d) The facility shall obtain written orders for medical treatment ~~[(documented telephone orders are acceptable)]~~ at the time of admission.

(e) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that ~~[at a minimum]~~ includes:

(i) an evaluation of vision and hearing;

(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;

(iii) routine screening laboratory examinations, as determined necessary by the physician ~~[-, and special studies when needed];~~ and

(iv) tuberculosis control in accordance with Rule R388-804, Tuberculosis Control ~~[-Rule]~~.

(2) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by Section R432-152-11.

(a) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(b) A physician shall participate in the discharge planning of clients under a medical care plan of treatment. In cases of discharge against medical advice, the facility ~~[must]~~ shall immediately notify the attending physician.

#### **R432-152-17. Nursing Services.**

(1) The facility shall provide nursing services in accordance with client needs. Nursing services shall include:

(a) participation as appropriate in the development, review ~~[-]~~ and update of an individual program plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client if the physician has determined that an individual client requires such a plan; and

(c) for those clients certified as not needing a medical care plan, a documented quarterly health status review by direct physical examination conducted by a licensed nurse including identifying and implementing nursing care needs as prescribed by the client's physician.

(2) Nursing services shall coordinate with other members of the interdisciplinary team to implement appropriate protective and preventive health measures that include:

## NOTICES OF PROPOSED RULES

(a) training clients and staff as needed in appropriate health and hygiene methods;

(b) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(c) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness[;] and basic skills required to meet the health needs of the clients.

(3) Nursing practice and delegation of nursing tasks ~~[must]~~shall comply with Section R156-31b-701, ~~Delegation of Nursing Tasks~~.

(a) If the facility utilizes only licensed practical nurses to provide health services, there ~~[must]~~shall be a formal arrangement for a registered nurse to provide verbal or on-site consultation to the licensed practical nurse.

(b) Non-licensed staff who work with clients under a medical care plan ~~[must]~~shall be supervised by licensed nursing personnel.

(4) The administrator shall employ and designate, in writing, a nursing services supervisor.

(a) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.

(b) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.

(5) The nursing services supervisor ~~shall~~is responsible to ensure that the following duties are carried out:

(a) establish a system to assure nursing staff implement physician orders and deliver health care services as needed;

(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each client's needs are met;

(c) review each client's health care needs and orders for care and treatment;

(d) review client individual program plans to assure necessary medical aspects are incorporated;

(e) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(f) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care rendered and include the client's response;

(g) teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the client;

(h) inform the administrator, attending physician[;] and family of significant changes in the client's health status;

(i) when appropriate, plan with the physician, family, and health-related agencies for the care of the client upon discharge;

(j) develop, with the administrator, a nursing services procedure manual including ~~[all]~~ procedures practiced in the facility;

(k) coordinate client services through appropriate quality assurance and interdisciplinary team meetings;

(l) respond to the pharmacist's quarterly medication report;

(m) develop written job descriptions for ~~[all]~~ levels of nursing personnel and orient ~~[all]~~ new nursing personnel to the facility and their duties and responsibilities;

(n) complete written performance evaluations for each member of the nursing staff at least annually; and

(o) plan or conduct documented training programs for nursing staff and clients.

### R432-152-18. Dental Services.

(1) The facility shall provide or arrange for comprehensive dental diagnostic services and comprehensive dental treatment for each client.

(a) "Comprehensive dental diagnostic services" means:

(i) a complete extra-oral and intra-oral examination, using ~~[all]~~ diagnostic aids necessary to properly evaluate the client's oral condition, ~~[not later than]~~before one month after admission to the facility, unless the client's record contains an examination that was completed within ~~[twelve]~~12 months before admission;

(ii) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(iii) a review of the results of examination and entry of the results in the client's dental record.

(b) "Comprehensive Dental Treatment" means:

(i) the available emergency dental treatment on a 24-hour~~-a day~~ basis by a licensed dentist; and

(ii) dental care needed for relief of pain and infection, restoration of teeth[;] and maintenance of dental health.

(2) If appropriate, a dental professional shall participate in the development, review and update of the individual program plan as part of the interdisciplinary process, either in person or through written report to the interdisciplinary team.

(3) The facility shall provide education and training for clients and responsible staff in the maintenance of clients' oral health.

(4) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client with a dental summary maintained in the client's living unit.

(5) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's record.

### R432-152-19. Pharmacy Services.

(1) The facility shall provide routine and emergency ~~[drugs]~~medications and biologicals.

(a) Medications~~[Drugs]~~ and biologicals may be obtained from community or contract pharmacists, or the facility may maintain a licensed pharmacy.

(b) Pharmacy services shall be under the direction and responsibility of a qualified, licensed pharmacist. The pharmacist may be employed full time by the facility or may be retained by contract.

(c) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator. Pharmacy policies shall address:

(i) medication~~[drug]~~ orders;

(ii) labeling;

(iii) storage;

(iv) emergency medication~~[drug]~~ supply;

(v) administration of medications;

(vi) pharmacy supplies; and

(vii) automatic-stop orders.

(2) The pharmacist, with input from the interdisciplinary team, shall review the medication~~[drug]~~ regimen of each client at least quarterly.

(a) The pharmacist shall report any irregularities or errors in a client's medication~~[drug]~~ regimen to the prescribing physician and interdisciplinary team.



(b) The pharmacist shall develop and review a record of each client's medication~~[drug]~~ regimen.

(3) The facility shall maintain a~~[A]~~n individual medication administration record ~~[shall be maintained]~~ for each client.

(4) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan, either in person or through written report to the interdisciplinary team.

(5) The facility shall have an organized system for medication~~[drug]~~ administration that identifies each medication~~[drug]~~ up to the point of administration. The system shall assure that ~~[all]~~ medications and treatments:

(a) are administered in compliance with the physician's orders;

(b) are administered without error; and

(c) are administered by licensed medical or licensed nursing personnel.

(6) The facility shall teach c~~[C]~~lients ~~[shall be taught]~~ how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective.

(a) The facility shall inform the client's physician ~~[shall be informed]~~ of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client.

(b) No client may self-administer medications until ~~[he or she]~~they demonstrate~~[s]~~ the competency to do so.

(7) The facility shall immediately record ~~[E]~~ach telephone order~~[s]~~ for medications ~~[shall be recorded immediately]~~ including the date and time of the order and the receiver's signature and title. The person who prescribed the order ~~[must]~~shall ~~[be]~~ countersign~~[ed]~~ and date~~[d]~~ the order within 15 days of writing the order ~~[by the person who prescribed the order]~~.

(8) The facility shall maintain records of the receipt and disposition of ~~[all]~~ controlled medications~~[drugs]~~.

(a) The facility shall maintain r~~[R]~~ecords of s~~[S]~~chedule III and IV d~~[D]~~rugs ~~[shall be maintained]~~ in such a manner that the receipt and disposition are ~~[shall be]~~ readily traced.

(b) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of ~~[all]~~ controlled drugs in schedules II through IV, drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970~~[, 21 U.S.C. 801 et seq.]~~ as implemented by 42 CFR Part 308.

(9) The facility shall store medications~~[drugs]~~ under proper conditions of sanitation, temperature, light, humidity~~[,]~~ and security.

(a) ~~[All]~~The facility shall secure controlled substances ~~[shall be secured]~~ in a manner consistent with applicable ~~[state]~~ pharmacy laws.

(b) ~~[Provision]~~The facility shall ~~[be made for the]~~ separate and secure the storage of ~~[all]~~ non-medication items such as poisonous and caustic materials.

(c) Medication containers shall be clearly labeled.

(d) Only persons authorized by facility policy shall have access to medications.

(e) The facility shall store m~~[M]~~edication intended for internal use ~~[shall be stored]~~ separately from medication intended for external use.

(f) The facility shall maintain m~~[M]~~edications stored at room temperature ~~[shall be maintained within]~~ between 59 ~~[and]~~ 80 degrees Fahrenheit ~~[(-15 to 30 degrees C)]~~~~[,]~~ and shall maintain refrigerated medications ~~[shall be maintained within]~~ between 36 ~~[and]~~ 46 degrees Fahrenheit ~~[(-2 to 8 degrees C)]~~.

(g) The facility shall store m~~[M]~~edications, and similar items that require refrigeration, ~~[shall be stored]~~ securely and segregated from food items.

(h) The facility shall keep m~~[M]~~edications ~~[shall be kept]~~ in the original pharmacy container and shall not ~~[be]~~ transfer~~[red]~~ the medications~~[Drugs]~~ to other containers. Medications~~[Drugs]~~ taken out of the facility for home visits, workshops, school~~[, etc.]~~ or other activities shall be packaged and labeled by a person authorized to package medications in accordance with ~~[State]~~ law ~~[by a person authorized to package medications]~~.

(i) Clients who have been trained to self-~~[,]~~administer ~~[drugs]~~ medications in accordance with Subsection R432-152-19(6) may have access to keys to their individual drug~~[drug]~~ medication supply.

(10) Labeling of medications~~[drugs]~~ and biologicals shall:

(a) be based on currently accepted professional principles and practices; and

(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(11) The facility shall remove from use outdated medications~~[drugs]~~ and medication~~[drug]~~ containers with worn, illegible~~[,]~~ or missing labels.

(12) The facility shall immediately remove medications~~[Drugs]~~ and biologicals packaged in containers designated for a particular client ~~[shall be immediately removed]~~ from the client's current medication supply if the medication is discontinued by the physician.

(13) Medications~~[Drugs]~~ may be sent with the client upon discharge if so ordered by the discharging physician, provided ~~[that]~~ the medications~~[drugs]~~ are released in compliance with Utah pharmacy law and rules and a record of the medications~~[drugs]~~ sent with the client is documented in the client's health record.

(14) Within one month of a medication being discontinued, the facility shall destroy the ~~[Discontinued]~~ individual client medications~~[drugs]~~ supplied by prescription or those ~~[which]~~ that remain in the facility after discharge or death of the client ~~[shall be destroyed within one month by the facility]~~ in the following manner:

(a) ~~[All drugs]~~ medications shall be destroyed by the facility in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility~~[,]~~;

(b) ~~[I]~~if one or both of these persons are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses~~[,]~~;

(c) ~~[T]~~he~~[se]~~ appointments shall be rotated periodically among responsible staff members~~[,]~~; and

(d) ~~[T]~~he name of the client, the name and strength of the drug~~[drug]~~ medication, the prescription number, the amount destroyed, the method of destruction, the date of destruction~~[,]~~ and the signatures of the witnesses ~~[required above]~~ shall be recorded in the client's record or in a separate log and retained for at least three years.

(15) Unless otherwise prohibited under applicable federal or state laws, individual client drugs~~[drugs]~~ medications supplied in sealed containers may be returned, if unopened, to the issuing pharmacy for disposition provided that:

(a) no controlled drugs~~[drugs]~~ medications are returned;

(b) ~~[all such drugs]~~ medications are identified as to lot or control number; and

(c) the signatures of the receiving pharmacist and a licensed nurse employed by the facility are recorded and retained for at least three years in a separate log ~~[which]~~ that lists the name of the client, the name, strength, prescription number, if applicable, the amount of the drug~~[drug]~~ medication returned~~[,]~~ and the date of return.

(16) The facility shall maintain a~~[A]~~n emergency ~~[drug]medication~~ supply appropriate to the needs of the clients served~~[shall be maintained in the facility]~~.

(a) The pharmacist in coordination with the administrator shall develop an emergency ~~[drug]medication~~ supply policy to include the following requirements:

(i) ~~[S]~~[specific [drugs]medications] and dosages to be included in the emergency ~~[drug]medication~~ supply shall be listed~~[-]~~;

(ii) ~~[C]~~[containers] shall be sealed to prevent unauthorized use~~[-]~~;

(iii) ~~[C]~~[contents] of the emergency ~~[drug]medication~~ supply shall be listed on the outside of the container and the use of contents shall be documented by nursing staff~~[-]~~;

(iv) ~~[F]~~[the emergency [drug]medication] supply shall be accessible to nursing staff~~[-]~~; and

(v) ~~[F]~~[the pharmacist] shall inventory the emergency ~~[drug]medication~~ supply monthly. Used or outdated items shall be replaced within 72 hours.

(17) The pharmacy shall furnish ~~[drugs]medications~~ and biologicals as follows:

(a) ~~[Drugs]medications~~ ordered for administration as soon as possible shall be available and administered within two hours of a physician's order~~[-]~~;

(b) ~~[Anti-infectives]antibiotics~~ shall be available and administered within four hours of a physician's order~~[-]~~;

(c) ~~[All]-~~[new [drug]medication] orders shall be initiated within 24 hours of the order or as indicated by the physician~~[-]~~;

(d) ~~[P]~~[prescription [drugs]medications] shall be refilled in a timely manner~~[-]~~; and

(e) ~~[O]~~[orders] for controlled substances shall be sent to the pharmacy within 48 hours of the order. The order sent to the pharmacy may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.

#### **R432-152-20. Laboratory Services.**

(1) The facility ~~[must]~~shall provide laboratory services in accordance with the size and needs of the client population.

(2) Laboratory services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988~~[(CLIA)]~~. ~~[CLIA]~~[Laboratory] inspection reports shall be available for Department review.

#### **R432-152-21. Environment.**

(1) Infection control procedures and reporting shall comply with Subsection R432-150-11(4).

(2) The facility shall have a safety committee ~~[which-]that~~ includes the administrator, ~~[QMRP]Qualified Intellectual Disabilities Professional~~, head housekeeper, chief of facility maintenance~~[-]~~, and others as designated by facility policy.

(a) The safety committee ~~[must]~~shall:

(i) review ~~[all-]~~[incident and accident] reports and recommend changes to the administrator to prevent or reduce reoccurrence;

(ii) review facility safety policies and procedures at least annually, and make appropriate recommendations; and

(iii) establish a procedure to inspect the facility periodically for hazards.

(b) Inspection reports shall be filed with the safety committee.

#### **R432-152-22. Emergency Plan and Procedures.**

(1) The facility shall develop and implement detailed written plans and procedures to meet ~~[all-]~~[potential] emergencies and disasters such as fire, severe weather~~[-]~~, and missing clients.

(a) The facility shall periodically review and update written emergency procedures.

(b) The emergency plan ~~[must]~~shall be made available to the staff.

(c) Facility staff ~~[must]~~shall receive periodic training on emergency plan procedures.

(d) The emergency plan shall address the following:

(i) evacuation of occupants to a safe place within the facility or to another location;

(ii) delivery of essential care and services to facility occupants by alternate means;

(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;

(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency; and

(v) maintenance of safe ambient air temperatures within the facility. Ambient air temperature of at least 58 degrees Fahrenheit. ~~[Must]~~shall be maintained during emergencies.

(e) Emergency heating ~~[must]~~shall be approved by the local fire department.

(2) The facility's emergency plan shall identify:

(a) the person with decision-making authority for fiscal, medical~~[-]~~, and personnel management;

(b) on-hand personnel, equipment~~[-]~~, and supplies and how to acquire additional ~~[help, supplies, and equipment]~~[resources] after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities~~[-]~~, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency, in order of priority;

(f) method of transporting and evacuating clients and staff to other locations; and

(g) conversion of the facility for emergency use.

(3) Emergency telephone numbers shall be posted near telephones accessible to staff.

(4) ~~The facility shall hold s~~[S]imulated disaster drills ~~[shall be held-]~~semi-annually for ~~[all-]~~[staff], in addition to fire drills. Documentation shall be maintained for Department review.

(5) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers.

(b) The written fire~~[-]~~ emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and fire drill documentation shall be in accordance with Buildings ~~[U]~~[under the [F]jurisdiction of the [State] Fire Prevention Board[-R710-4].

(d) The facility shall evacuate clients during at least one drill each year on each shift that shall includ~~[ing]~~[-]:

- (i) ~~making special provisions for the~~ evacuation of clients with physical disabilities;
- (ii) filing a report and evaluation on each evacuation drill; and
- (iii) investigat~~ing~~ion of ~~all~~ problems with evacuation drills, including accidents, and ~~take~~ corrective action taken.

#### **R432-152-23. Smoking Policies.**

Smoking policies shall comply with ~~[UCA]~~ Title 26, Chapter 38, ~~[the]~~ "Utah Indoor Clean Air Act" ~~[;]~~, ~~and Sections 12-7.4 and 13-7.4 of the 1997 Life Safety Code.~~

#### **R432-152-24. Pets in Long-Term Care Facilities.**

- (1) Each facility shall develop a written policy regarding pets in accordance with these rules and local ordinances.
- (2) The facility shall adhere to the requirements of Section R432-150-21.

#### **R432-152-25. Housekeeping Services.**

- (1) The facility shall provide~~[There shall be]~~ housekeeping services to maintain a clean, sanitary~~;~~ and health~~[ful]~~y environment~~[in the facility]~~.
- (2) If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details ~~[all]~~ services provided.
- (3) The housekeeping service shall meet ~~[all]~~ the requirements of Section R432-150-26.

#### **R432-152-26. Laundry Services.**

The facility shall adhere to the requirements of Section R432-150-27.

#### **R432-152-27. Maintenance Services.**

The facility shall adhere to the requirements of Section R432-150-28.

#### **R432-152-28. Dietary Services.**

The facility shall adhere to the requirements of Section R432-150-24.

#### **R432-152-29. Client Records.**

- (1) The facility shall develop and maintain a record keeping system that includes a separate record for each client with documentation of the client's health care, active treatment, social information~~;~~ and protection of the client's rights.
  - (a) The facility shall keep confidential ~~[all]~~ information contained in the client's records~~;~~ ~~regardless of the form or storage method of the records~~.
  - (b) The facility shall develop and implement policies and procedures governing the release of any client information, including consent~~s~~ necessary from the client or client's legal guardian.
  - (c) ~~[All-e]~~ Entries into client records ~~[must]~~ shall be legible, dated and signed by the individual making the entry.
  - (d) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.
  - (e) The facility shall insure each identified residential living unit has available on-site pertinent information of each client's record.
  - (f) Client's records shall be complete and systematically organized according to facility policy to facilitate retrieval and compilation of information.
  - (2) The client record department shall be under the direction of a ~~[F]~~ Registered ~~record administrator, RRA,~~ Health Information Administrator or a ~~n accredited record technician, ART~~ Registered

Health Information Technician through employment or consultation. If ~~[an RRA or ART is not employed at least part time, the facility shall consult at least semi-annually with an RRA or ART according to the needs of the facility]~~ retained by consultation, visits shall be at least semi-annually and documented through written reports to the administrator.

- (3) The facility shall safeguard c[E]lient records ~~[shall be safeguarded]~~ from loss, defacement, tampering, fires~~;~~ and floods.

- (4) The facility shall protect c[E]lient records ~~[shall be protected]~~ against access by unauthorized individuals.

- (5) The facility shall retain c[E]lient records ~~[shall be retained]~~ for at least seven years after the last date of client care.

- (a) The facility shall retain r[R]ecords of minors ~~[shall be retained]~~ as follows:

- (i) at least two years after the minor reaches age 18 or the age of majority; and
- (ii) a minimum of seven years.

- (b) ~~[All-e]~~ The facility shall retain client records ~~[shall be retained]~~ within the facility upon change of ownership.

- (c) If a facility ceases operation, ~~[provision]~~ the facility shall ~~[be made]~~ arrange for appropriate safe storage and prompt retrieval of ~~[all]~~ client records, client indices~~;~~ and discharges for the period specified.

- (d) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.

#### **R432-152-30. Respite Care.**

- (1) ~~[Mental Retardation Facilities]~~ Intermediate Care Facilities for Individuals with Intellectual Disabilities may provide respite services that comply with the following requirements:

- (a) ~~[F]~~ the purpose of respite is to provide intermittent, time- ~~[limited care to give primary caretakers relief from the demands of caring for a person];~~

- (b) ~~[R]~~ respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. ~~[Stays which exceed 14 days are a mental retardation facility admission, and shall be subject to the requirements of this rule applicable to non-respite residents.]~~

- (c) ~~[F]~~ the facility shall coordinate the delivery of respite services with the recipient of services, case manager, ~~[if one exists,]~~ and the family member or primary caretaker~~;~~

- (d) ~~[F]~~ the facility shall document the person's response to the respite placement and coordinate with ~~[all]~~ provider agencies to ensure an uninterrupted service delivery program~~;~~

- (e) ~~[F]~~ the facility ~~[must]~~ shall complete a service agreement to serve as the plan of care, ~~and~~ ~~[The service agreement must]~~ shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders~~;~~

- (f) ~~[F]~~ the facility shall have written policies and procedures available to staff regarding the respite care clients ~~[which]~~ that include:

- (i) medication administration;
- (ii) notification of a responsible party in the case of an emergency;
- (iii) service agreement and admission criteria;
- (iv) behavior management interventions;
- (v) philosophy of respite services;
- (vi) post-service summary;
- (vii) training and in-service requirement for employees; and
- (viii) handling personal funds~~;~~
- (g) ~~[P]~~ The facility shall provide persons receiving respite services ~~[shall be provided]~~ a copy of the Resident Rights documents upon initial day of service and updated annually~~;~~

## NOTICES OF PROPOSED RULES

(h) ~~[F]~~the facility shall maintain a record for each person receiving respite services ~~[which] that~~ includes:

(i) ~~[R]~~retention and storage of records shall comply with Subsections R432-152-29(3) and (4)[-];

(ii) ~~[C]~~confidentiality and release of information shall comply with Subsection R432-150-25(3)[-]; and

(iii) ~~[F]~~the record shall contain the following:

(A) a service agreement;

(B) demographic information and resident identification data;

(C) nursing notes;

(D) physician treatment orders;

(E) records made by staff regarding daily care of the person in ~~[-]~~service;

(F) accident and injury reports; and

(G) a post-service summary[-]; and

(i) ~~[F]~~The facility shall file in the client record and inform staff if a [person] client has an advanced directive[-], a copy shall be filed in the record and staff informed.

### R432-152-31. Penalties.

Any person who violates ~~[any provision of]~~ this rule may be subject to the penalties enumerated in Section 26-21-11 and Section R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

**KEY: health care facilities**

**Date of Last Change:** 2022~~[July 6, 1999]~~

**Notice of Continuation:** February 13, 2017

**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-13.5

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** New

**Utah Admin. Code Ref (R no.):** R432-153

**Filing ID**  
54093

### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	4th Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	385-214-9187	kristigrimes@utah.gov

Joel Hoffman	801-273-2804	jhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

#### 2. Rule or section catchline:

R432-153. Pediatric Respite Care Facility

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

This rule establishes health and safety standards to provide for the physical and psycho-social well-being of individuals receiving services in a pediatric respite care facility.

#### 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 regulations for the operation of a pediatric respite care facility. The facility would provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person. The facility would provide skilled nursing care for individuals up to age 17, not to exceed 14 days for any single respite stay. This rule was presented and approved by the Health Facility Committee on 07/01/2021.

### Fiscal Information

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

##### A) State budget:

There are currently no pediatric respite care facilities. When such a facility applies for licensure, construction will begin, and it is unlikely they will be operational in the year 2022. A relicensure survey inspection may be needed in 2023, and each year thereafter, for one facility. This relicensure survey will require two staff, along with support staff. The estimated cost to the state budget for a relicensure survey is \$950.

##### B) Local governments:

Local government city business licensing requirements were considered. This proposed rule should not impact local governments' revenues or expenditures. Pediatric Respite Care Facilities will be regulated by the state health department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

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

This is a new rule and there are currently no small businesses operating as a pediatric respite care facility. When such a facility applies for licensing, it is unlikely they will fall within a small business category.

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

This is a new rule and there are currently no non-small businesses operating as a pediatric respite care facility. When such a facility applies for licensure, the proposed rule will result in a fiscal impact to the facility. The facility will incur licensing fees, to include: New Provider Fee of \$747.50, Initial License Fee of \$260, and Per Bed Fee of \$19.50. The facility will incur license renewal fees every two years following the first year to include: Base Fee of \$520, and a per bed fee of \$39. The Department is aware of one facility that plans to apply for licensure, and an estimated 15 beds is used for anticipated cost analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to affected persons other than non-small businesses.

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

After conducting a thorough analysis, it was determined that this proposed rule will not result in 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):

Because this is a new rule, there are currently no small businesses operating as a pediatric respite care facility. When such a facility applies for licensing, it is unlikely they will fall within a small business category. This is a new rule and there are currently no non-small businesses operating as a pediatric respite care facility. When such a facility applies for licensure, the proposed rule will result in a fiscal impact to the facility. The facility will incur licensing fees, to include: New Provider Fee of \$747.50, Initial License Fee of \$260 and Per Bed Fee of \$19.50. The facility will incur license renewal fees every two years following the first year to include: Base Fee of \$520, and a per bed fee of \$39. The Department is aware of one facility that plans to apply for licensure, and an estimated 15 beds is used for anticipated cost analysis. 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			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$950	\$950
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$1300	\$1105
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$2250</b>	<b>\$2055</b>
<b>Fiscal Benefits</b>			
State Government	\$	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$-2250</b>	<b>\$-2055</b>

**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 21		
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**Public Notice Information****9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	01/14/2022
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<b>10. This rule change MAY become effective on:</b>	01/21/2022
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**

<b>Agency head or designee, and title:</b>	Nate Checketts, Executive Director	<b>Date:</b>	11/08/2021
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**R432. Health, Family Health and Preparedness, Licensing.****R432-153. Pediatric Respite Care Facility.****R432-153-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

**R432-153-2. Purpose.**

This rule establishes health and safety standards to provide for the physical and psycho-social well-being of individuals receiving services in pediatric respite care facilities.

**R432-153-3. Construction Standard.**

Pediatric Respite Care Facilities shall be constructed and maintained in accordance with Rule R432-5, Nursing Care and Respite Care Facility Construction.

**R432-153-4. Definitions.**

(1) The definitions found in Section R432-1-3 apply to this rule.

(2) The following definitions apply to pediatric respite care facilities.

(a) "Administrator" means the person in charge of the daily operations of the pediatric respite care facility.

(b) "Certification in Cardiopulmonary Resuscitation" (CPR) refers to certification issued after completion of an in-person course, to include skills testing and evaluation on-site with a licensed instructor.

(c) "Chemical Restraint" means any medication administered to a client to control or restrict the client's physical, emotional, or behavioral functioning for the convenience of staff, for punishment, discipline, or as a substitute for direct client care.

(d) "Facility" means a pediatric respite care facility.

(e) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(f) "Nurse Aide" means any individual, other than an individual licensed in another category, providing nurse related services to clients under the direction of a licensed nurse. This definition does not include an individual who volunteers to provide such services without pay.

(g) "Pediatric Respite Care Facility" means a facility that provides respite care to pediatric clients up to age 17.

(h) "Registered Nurse" as defined in the Title 58, Chapter 31b, Nurse Practice Act.

(i) "Respite Care" means to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person. Respite services shall not exceed 14 days for any single respite stay.

**R432-153-5. Scope of Services.**

(1) The facility shall provide 24-hour licensed nursing services.

(a) The facility shall ensure that nurses are present on the premises at all times to meet the needs of clients.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to act as the director of nursing.

(c) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(d) A licensed nurse shall serve as charge nurse on each shift.

(2) The facility shall provide medical supervision and dietary services.

(3) The following services shall be provided as required in the client service agreement:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy;

(d) respiratory therapy; and

(e) other therapies as indicated.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager if one exists, and the family member or primary caregiver.

(5) The facility shall document the client's response to the respite placement and coordinate with each provider agency to ensure an uninterrupted service delivery program.

(6) The facility shall complete a service agreement to serve as the plan of care, which shall identify the prescribed medications, primary care provider treatment orders, need for assistance with activities of daily living and diet orders.

(7) The facility shall have access to supplemental services such as laboratory and pharmacy as needed.

**R432-153-6. Governing Body.**

(1) The facility shall have a governing body or designated persons functioning as a governing body.

(2) The governing body or designated persons in Subsection (1) shall:

(a) establish and implement policies regarding the management and operation of the facility;

(b) institute bylaws, policies and procedures relative to the general operation of each facility service, including the health care of the clients and the protection of client rights; and

(c) appoint the administrator in writing.

**R432-153-7. Administrator.**

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules; and

(c) is able to deliver, or direct the delivery of, appropriate care to clients; and

(2) The administrator shall have at least one of the following:

- (a) a Utah health facility administrator license;
- (b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;
- (c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or
- (d) an associate degree and four years or more management experience in a health care field.

(3) The administrator shall supervise no more than one facility.

(4) The administrator shall be on the premises a sufficient number of hours in the business day, and at other times as necessary to manage and administer the facility.

(5) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of client safety and well-being. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(6) The administrator's responsibilities shall be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

- (a) act as a liaison between the licensee, medical and nursing staff, and other supervisory staff of the facility;
- (b) respond to recommendations made by the Quality Assurance Committee;
- (c) implement policies and procedures governing the operation of each function of the facility;
- (d) review each incident and accident report and document the corrective action taken or reason for no action;
- (e) complete and document an investigation whenever there is reason to believe that a client has been subject to abuse, neglect, or exploitation; and
- (f) report any suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action taken if the alleged violation is verified.

(7) The administrator shall secure and update contracts for required services not provided directly by the facility.

#### **R432-153-8. Medical Director.**

The administrator shall retain by formal agreement a licensed physician to serve as medical director or advisory physician according to client and facility needs.

#### **R432-153-9. Staff and Personnel.**

(1) Direct-care personnel shall be on the facility premises 24 hours a day to meet clients' needs as determined by the clients' assessment and service agreements.

(a) The administrator shall develop job descriptions for each position, including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) The administrator shall ensure all personnel are licensed, certified, or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire. The health inventory shall obtain at least the employee's history of the following:

- (a) conditions that predispose the employee to acquiring or transmitting infectious diseases;
- (b) conditions that may prevent the employee from performing certain assigned duties satisfactorily; and
- (c) health screening and immunizations.

(5) Employee skin testing by the Mantoux method or other Food and Drug Administration approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with Section R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that each employee is skin-tested for tuberculosis within two weeks of:

- (i) initial hiring;
- (ii) suspected exposure to a person with active tuberculosis; and
- (iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for each employee with known positive reactions to skin tests.

(6) The facility director of nursing shall report any infection and communicable disease reportable by law to the local health department in accordance with Section R386-702-3.

(7) Each employee shall receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

- (a) job description;
- (b) ethics, confidentiality and client rights;
- (c) fire and disaster plan;
- (d) policy and procedures; and
- (e) reporting responsibility for abuse, neglect, and exploitation.

(8) Each employee shall receive documented in-service training. The training shall be tailored to annually include the following subjects that are relevant to the employees' job responsibilities:

- (a) fire prevention;
- (b) review and drill of emergency procedures and evacuation plan;
- (c) the reporting of client abuse, neglect, or exploitation to the proper authorities;
- (d) prevention and control of infections;
- (e) accident prevention and safety procedures, including instruction in body mechanics for each employee required to lift, turn, position or ambulate clients;
- (f) proper use and documentation of restraints;
- (g) client rights;
- (h) a basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches;
- (i) confidentiality of client information;
- (j) first aid; and
- (k) prevention and control of infections.

(9) Any person who provides nursing care activities, including nurse aides, shall work under the supervision of an RN or LPN and shall demonstrate competency and dependability in client care.

(10) Personnel who provide care to clients shall be certified nurse aides or complete a state-certified nurse aide program within four months of the date of hire.

## NOTICES OF PROPOSED RULES

(11) There shall always be one staff person on duty that has current training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each client receives prompt first aid as needed.

(12) The facility may utilize volunteers in activities in the facility, provided that volunteers are not included in the facility's staffing plan in lieu of facility employees. Volunteers shall be supervised and familiar with clients' rights and the facility's policies and procedures.

(13) An employee who reports suspected abuse, neglect, or exploitation may not be subject to retaliation, disciplinary action or termination by the facility for making the report.

(14) The facility shall develop and implement policies and procedures governing an infection control program to protect clients, family and personnel; that includes appropriate task related employee infection control procedures and practices.

### **R432-153-10. Quality Assurance.**

(1) The administrator shall implement a quality assurance program to include a Quality Assurance Committee. The committee shall:

(a) consist of at least the facility administrator and either the medical director or the director of nursing;

(b) meet at least quarterly to identify and act on quality issues;

(c) review medication errors; and

(d) review incident reports.

(2) The facility shall have written incident and injury reports to document client death, injuries, elopement, fights or physical confrontations, situations that require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of clients. The reports shall be kept on file for at least three years.

### **R432-153-11. Client Rights.**

(1) The facility shall establish written client rights.

(2) The facility shall make a copy of the client rights document available to the clients, the client guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each client admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of client rights and each rule and regulation governing client conduct;

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate;

(c) be transferred or discharged only for medical reasons, for personal welfare or that of other clients, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(d) be free from mental and physical abuse, neglect, and exploitation;

(e) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(f) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) not be required to perform services for the facility that are not included for therapeutic purposes in the service agreement;

(h) associate and communicate privately with persons of the client's choice, and to send and receive personal mail unopened;

(i) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other clients in the facility;

(j) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other clients;

(k) have members of the clergy admitted at the request of the client or responsible person at any time;

(l) allow relatives, responsible persons or individuals designated by the responsible person to visit critically ill clients at any time;

(m) be allowed privacy for visits with family, friends, clergy or social workers;

(n) have confidential access to telephones for communication;

(o) choose activities, schedules, and health care consistent with individual interests, assessments and service agreement;

(p) interact with members of the community both inside and outside the facility;

(q) make choices about each aspect of life in the facility that is significant to the client;

(r) be informed of complaint or grievance procedures; and

(s) access to each record pertaining to the client, upon oral or written request.

(4) The facility shall accommodate client needs and preferences, except when the health and safety of the individual or other clients may be endangered. A client shall be given at least a 24-hour notice before an involuntary room move is made in the facility.

(5) In an emergency when there is actual or threatened harm to others, property or self, the 24-hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change shall be documented for Department review.

(6) The facility shall make and document efforts to accommodate the client's adjustment and choices regarding room changes.

(7) The facility shall have available in a public area the results of the current facility survey and any plans of correction.

(8) The facility shall notify the client's responsible party within 24 hours of any incidents, accidents with injuries or change in medical condition. Notification of medical emergencies shall be made immediately.

### **R432-153-12. Assessment and Service Agreement.**

(1) The facility shall assess each client prior to admission to ensure that the needs of the client can be met.

(2) The licensed healthcare professional shall complete and sign the client assessment.

(3) The facility shall develop a service agreement to outline services to be provided during the respite stay.

(4) The service agreement in Subsection (3) shall include:

(a) medication administration;

(b) emergency contact information for the responsible party; and



(c) other therapies and treatments required for care.

(5) The facility shall ensure that the services provided meet professional standards of quality and are provided by qualified persons in accordance with the client's written service agreement.

(6) If the client has an advance directive, a copy shall be included with the service agreement.

#### **R432-153-13. Restraint Policy.**

(1) Each client has the right to be free from physical or chemical restraints used for discipline, convenience or not required to treat the client's medical symptoms.

(2) The facility shall have written policies and procedures regarding the proper use of restraints, which shall include:

(a) restraints shall only be used to assist clients to attain and maintain optimum levels of physical and emotional functioning;

(b) restraints shall not be used as substitutes for direct client care, activities or other services;

(c) restraints shall not unduly hinder evacuation of the client in the event of fire or other emergency; and

(d) if use of a physical or a chemical restraint is implemented, the facility shall inform the client and their responsible party of the reasons for the restraint.

(3) Physical and chemical restraint policies under Subsection (2)(d) shall incorporate and address at least the following:

(a) appropriateness of use;

(b) procedures for use; and

(c) less restrictive alternatives prior to the use of more restrictive measures.

(4) Emergency use of physical and chemical restraints shall comply with the following:

(a) a physician, a licensed health practitioner or the director of nursing shall authorize the emergency use of restraints; and

(b) the facility shall document in the client's record the circumstances necessitating emergency use of the restraint and the client's response.

#### **R432-153-14. Medical Records.**

(1) The facility shall retain, store and safeguard the client medical record and its contents.

(2) The facility shall protect the client medical record against access by unauthorized individuals.

(3) The facility shall retain the client medical record for at least seven years. Medical records of minors shall be kept until the age of 18 plus four years, but in no case less than seven years.

(4) The facility shall maintain a record for each client receiving respite services that includes:

(a) the assessment and service agreement;

(b) demographic information and client identification data;

(c) contact information for the responsible party;

(d) nursing notes;

(e) physician treatment orders;

(f) records made by staff regarding daily care of the client in service; and

(g) a post-service summary.

#### **R432-153-15. Pet Policy.**

(1) The facility shall develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee shall determine which pets may be brought into the facility. Family members may bring pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

#### **R432-153-16. Food Services.**

(1) The facility shall provide each client with a safe, palatable, well-balanced diet that meets their daily nutritional and special dietary needs.

(2) There shall be adequate staff employed by the facility to meet the dietary needs of the clients.

(3) The facility shall employ a dietitian either full-time, part-time or on a consultant basis.

(a) The dietitian shall be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(b) If a dietitian is not employed full-time, the administrator shall designate a full-time person to serve as the dietetic supervisor.

(c) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(4) Any personnel who prepares or serves food shall have a current food handler's permit.

(5) If the facility admits clients requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals.

(6) The facility shall develop menus that meet the nutritional needs of clients. Menus shall be:

(a) prepared in advance;

(b) followed;

(c) have different choices each day;

(d) posted for each day of the week;

(e) approved and signed by a certified dietician; and

(f) cycled no less than every two weeks.

(7) The facility shall retain documentation of any substitution to the menu for at least three months.

(8) The facility shall make available for Department review any food sanitation inspection reports of state or local health department inspections.

(9) The facility shall have no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(10) The facility shall provide special eating equipment and assistive devices for clients who need them.

(11) The facility shall maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu.

(12) The facility may use trained dining assistants to aid clients in eating and drinking if:

(a) a licensed practical nurse, registered nurse, advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the client does not have complicated feeding problems, such as recurrent lung aspirations, behaviors which interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) the service agreement documents that the client needs assistance with eating and drinking and defines who is qualified to offer the assistance.

(13) If the facility uses a dining assistant, the facility shall assure that the dining assistant:

(a) has completed a dietary assistant training course; and

(b) performs duties only for those clients who do not have complicated feeding problems.

**R432-153-17. Housekeeping Services.**

(1) The facility shall provide a safe, clean, comfortable environment, allowing the client to use personal belongings to create a homelike environment.

(2) The facility shall store in a locked area all cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials to prevent unauthorized access.

**R432-153-18. Laundry Services.**

(1) The facility shall provide laundry services to meet the needs of the clients, including a sufficient supply of linens.

(2) The facility shall inform the client and family of facility laundry policy for personal clothing.

(3) Soiled linen shall be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(4) The laundry area shall be separate from any room where food is stored, prepared or served.

**R432-153-19. Maintenance Services.**

(1) The facility shall ensure that buildings, equipment and grounds are maintained in good repair and in a clean and sanitary condition for the safety and well-being of clients, staff and visitors.

(2) The facility shall ensure that the premises are free from vermin and rodents.

(3) The facility shall maintain entrances, exits, steps, ramps and outside walkways in a safe condition with regard to snow, ice and other hazards.

(4) Facilities shall make provision for emergency lighting and heat.

(5) The facility shall deliver hot water to public and client care areas at temperatures between 105-120 degrees.

(6) The facility shall have at least one first aid kit available at a specified location in the facility.

(7) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association or a state or federal health agency.

(8) The facility shall have a clean-up kit for blood-borne pathogens.

**R432-153-20. Emergency Response and Preparedness Plan.**

(1) The facility shall ensure the safety and well-being of clients and make provisions for a safe environment in the event of an emergency or disaster.

(2) The facility shall develop an emergency and disaster plan to delineate:

(a) the names of persons in charge and persons with decision-making authority;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) evacuation routes, location of fire alarm boxes, fire extinguishers;

(e) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police and other appropriate agencies;

(f) individuals who shall be notified in an emergency in order of priority;

(g) methods of transporting and evacuating clients and staff to other locations; and

(h) instructions on how to contain a fire and how to use the facility alarm systems.

(3) The facility shall conduct and document simulated disaster drills semi-annually.

(4) The facility shall conduct and document simulated fire drills quarterly on each shift.

**R432-153-21. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in Sections 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

**KEY: health care facilities**

**Date of Enactment or Last Substantive Amendment: 2022**

**Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R432-700

**Filing ID**  
54051

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	4th Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
Joel Hoffman	801-273-2804	jhoffman@utah.gov

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

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

R432-700. Home Health Agency Rule

**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 expand the definition of "physician" to include other practitioners. This is in response to the Centers for Medicare and Medicaid Services (CMS) rule change to allow other practitioners to give orders for home health patients. This will allow for better and faster care for patients receiving care from home health agencies, especially in rural areas where practitioners are fewer.

**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 removes "physician" and adds "primary care provider" to the definitions. This will be defined to include physicians as well as advanced practice registered nurses who are the primary care providers for patients and those on-call for the primary care provider. The Health Facility Committee reviewed and approved this rule amendment on 05/12/2021.

**Fiscal Information**

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

**A) State budget:**

State government home health agency survey process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures. Home health agencies are regulated by the state health department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small business Licensed Home Health Agencies. There are 126 home health agencies, as determined by the Department's licensing data system. (North American Industry Classification System (NAICS) codes used – Home Health Care Services 621610, reports 54 small businesses).

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected non-small businesses because this amendment removes the definition of "physician" and adds the definition of "primary care provider" and therefore, would

not add cost for persons, businesses, or local government entities.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment removes the definition of "physician" and adds the definition of "primary care provider" and therefore, would not add cost for persons, businesses, or local government entities.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment removes the definition of "physician" and adds the definition of "primary care provider" and therefore, would not add cost for persons, businesses, or local government entities.

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

There is no fiscal impact on business because the expanded definition will not create any additional requirements for providers or facilities. 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**

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

## NOTICES OF PROPOSED RULES

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.			

## Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Title 26, Chapter 21		

## Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	01/14/2022
<b>10. This rule change MAY become effective on:</b>	
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.	
01/21/2022	

## Agency Authorization Information

<b>Agency head or designee, and title:</b>	Nate Checketts, Executive Director	<b>Date:</b>	10/11/2021
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## R432. Health, Family Health and Preparedness, Licensing.

## R432-700. Home Health Agency Rule.

## R432-700-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.

## R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

## R432-700-3. Compliance.

~~All h~~ Home health agencies shall comply with these rules and their own policies and procedures.

## R432-700-4. Definitions.

Terms used in this rule are defined in Section 26-21-2, and section R432-1-3. In addition:

(1) ~~[See common definitions rule R432-1-3.]~~  
(2) ~~Special definitions:~~  
(a) ~~"Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.~~  
(b) ~~"Certification in Cardiopulmonary Resuscitation" (CPR) refers to certification issued after completion of an in-person course, to include skills testing and evaluation on-site with a licensed instructor that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR].~~

(~~e~~2) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(~~d~~3) "Primary Care Provider" means the physician, physician assistant, or advanced practice registered nurse who is the primary care provider of the patient, and who has education and experience to assess and evaluate the health care needs of the patient. This definition also applies to a physician, physician assistant, or advanced practice registered nurse who is on call for the primary care provider of the patient. ~~"Parent Home Health Agency" means the agency that has administrative control of branch offices.]~~

(~~e~~4) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of Section R432-700-24.

## R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their places of residence[s].

## R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. ~~[These services may help avoid premature or inappropriate institutionalization.]~~

(3) Professional and supportive personnel shall be responsible to the home health agency for any of the following services ~~[which] that~~ they may perform:

- (a) ~~[P]~~provision of skilled services authorized by a primary care provider~~[physician]~~;
- (b) ~~[N]~~nursing services assessed, provided, or supervised by registered nurses; or
- (c) ~~[O]~~other related health services approved by a licensed practitioner.

#### **R432-700-7. Licensure Required.**

- (1) ~~R432-700 Home Health Agency Rule does~~~~[These provisions do]~~ not apply to a single individual providing professional services under the authority granted by ~~[his]~~a professional license or registration.
- (2) The home health agency shall comply with~~[See]~~ Rule R432-2 General Licensing Provisions.

#### **R432-700-8. Governing Body and Policies.**

- (1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the home health agency.
- (2) The governing body shall develop an organization chart that shows ~~[T]~~the administrative structure of the home health agency~~[must be shown by an organization chart]~~.
- (3) The governing body shall assume responsibility to:
- (a) ~~[C]~~comply with ~~[all]~~federal regulations, state rules, and local laws;
- (b) ~~[A]~~adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;
- (c) ~~[A]~~adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin; and
- (d) ~~[D]~~develop and implement bylaws which shall include at least:
- (i) ~~[A]~~a statement of purpose;
- (ii) ~~[A]~~a statement of qualifications for membership and methods to select members of the governing board;
- (iii) ~~[A]~~a provision for the establishment, selection~~[s]~~ and term of office for committee members and officers;
- (iv) ~~[A]~~a description of functions and duties of the governing body, officers~~[s]~~ and committees;
- (v) ~~[A]~~a statement of the authority and responsibility delegated to the administrator;
- (vi) ~~[A]~~a policy statement relating to conflict of interest of members of the governing body or employees who may influence home health agency decisions;
- (vii) ~~[M]~~required meetings as stated in bylaws, at least annually; and
- (viii) ~~[A]~~appointment by name and in writing of a qualified administrator who is responsible for the home health agency's overall functions.
- (4) The governing body shall ~~r~~~~[R]~~review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.
- (5) The governing body shall ~~m~~~~[M]~~ake provision for resources and equipment to provide a safe working environment for personnel.
- (6) The governing body shall ~~e~~~~[E]~~stablish a system of financial management and accountability.

#### **R432-700-9. Administrator.**

- (1) The administrator is the individual the home health agency's governing body appoints to be responsible for the overall

functions of the home health agency~~[designated by the governing body shall be responsible for the overall management of the agency]~~.

- (2) The administrator shall have at least one year of managerial or supervisory experience.
- (3) The administrator shall designate in writing a qualified person who shall act in ~~their~~~~[his]~~ absence. The administrator's designee~~[ated]~~ ~~[person]~~shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.
- (4) The administrator or designee shall be available during the home health agency's hours of operation.
- (5) ~~[Responsibilities.~~  
~~\_\_\_\_\_]~~The administrator shall have the responsibility to:
- (a) ~~[C]~~complete, submit~~[s]~~ and file ~~[all]~~records and reports required by the Department;
- (b) ~~[R]~~review home health agency policies and procedures at least annually and revise as necessary and document the date of review;
- (c) ~~[I]~~implement home health agency policies and procedures;
- (d) ~~[O]~~organize and coordinate functions of the home health agency by delegating duties and establishing a formal means of staff accountability;
- (e) ~~[A]~~appoint a ~~[physician]~~primary care provider~~[or]~~ registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the home health agency;
- (f) ~~[A]~~appoint a registered nurse to be the director of nursing services;
- (g) ~~[A]~~appoint the members and their terms of membership in the interdisciplinary quality assurance committee;
- (h) ~~[A]~~appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office~~[s]~~ and responsibilities of committee members;
- (i) ~~[D]~~designate a person responsible for maintaining a clinical record system on ~~[all]~~each patient~~[s]~~;
- (j) ~~[M]~~maintain current written designations or letters of appointment in the home health agency;
- (k) ~~[E]~~employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;
- (l) ~~[D]~~develop job descriptions that delineate functional responsibilities and authority;
- (m) ~~[D]~~develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs~~[s]~~ and promotes an orderly flow of information within the organization;
- (n) ~~[P]~~provide staff orientation as well as continuing education ~~[(staff development)]~~in applicable policies, rules, regulations~~[s]~~ and resource materials;
- (o) ~~[S]~~secure contracts for services not directly provided by the home health agency;
- (p) ~~[I]~~implement a program of budgeting and accounting; and
- (q) ~~[E]~~establish a billing system which itemizes services provided and charges submitted to the payment source.

#### **R432-700-10. Personnel.**

- (1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services~~[s]~~ and functions.
- (2) The home health agency shall develop written policies and procedures that address at least the following:
- (a) ~~[J]~~job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

- (b) ~~[O]~~orientation for direct and contract employees;
  - (c) ~~[C]~~criteria for, and frequency of, performance evaluations;
  - (d) ~~[W]~~work schedules~~[-]~~, method and period of payment~~[-]~~, fringe benefits such as sick leave, vacation~~[-]~~ and insurance~~[-, etc.]~~;
  - (e) ~~[F]~~frequency and documentation of in-service training; and
  - (f) ~~[C]~~contents of personnel files.
- (3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.
- (4) Failure to ensure that ~~[all]~~ staff are licensed, certified or registered may result in sanctions to the home health agency license.
- (5) The home health agency shall ~~[An annual in-service shall be-]~~document~~[ed]~~ that staff have been trained annually in the reporting requirements for suspected abuse, neglect and exploitation.

#### R432-700-11. Health Surveillance.

- (1) The home health agency shall establish and implement a policy and procedure for health screening of ~~[all]~~ home health agency health care workers ~~(persons with direct patient contact)~~ to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.
- (2) Employee health screening and immunization components of personnel health programs shall be developed by the home health agency, in accordance with Rule R386-702, Communicable Disease Rules.
- (3) Employees shall be tested for tuberculosis~~[- skin testing]~~ by the Mantoux Method or other FDA approved in-vitro serologic test ~~[and follow up for tuberculosis shall be done]~~ in accordance with Rule R388-804, Special Measures for Control of Tuberculosis.
- (a) The licensee shall ensure that ~~[all]~~ employees are skin-tested for tuberculosis within two weeks of:
- (i) initial hiring;
  - (ii) suspected exposure to a person with active tuberculosis; and
  - (iii) development of symptoms of tuberculosis.
- (b) Skin testing shall be exempted for ~~[all]~~ employees with known positive reaction to skin tests.
- (4) ~~[All-]~~infections and communicable diseases reportable by law shall be reported by the home health agency~~[facility]~~ to the local health department in accordance with Section R386-702-3.

#### R432-700-12. Orientation.

- (1) The home health agency~~[There]~~ shall ~~[be]~~document~~[ation]~~ that ~~[all]~~ employees are oriented to the home health agency and the job for which they are hired.
- (2) Orientation under Subsection (1) shall include~~[-but is not limited to-]~~:
- (a) ~~[F]~~the functions of home health agency employees and the relationships between various positions or services;
  - (b) ~~[J]~~job descriptions;
  - (c) ~~[D]~~duties for which persons are trained, ~~[hold-a registration, certificate,]~~certified or~~[-are]~~ licensed for;
  - (d) ~~[E]~~ethics, confidentiality~~[-]~~ and patients' rights;
  - (e) ~~[I]~~information about other community agencies including emergency medical services;
  - (f) ~~[O]~~opportunities for continuing education appropriate to the patient population served; and
  - (g) ~~[R]~~reporting requirements for suspected abuse, neglect or exploitation.

#### R432-700-13. Contracts.

- (1) The administrator shall secure written contracts or agreements from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.
- (2) The home health agency shall make any contract ~~[shall be]~~under Subsection (1) available for review by the Department.
- (3) The contract shall include:
- (a) ~~[T]~~the effective and expiration dates;
  - (b) ~~[A]~~a description of goods or services to be provided; and
  - (c) ~~[A]~~a copy of the professional license~~[-must be available, upon Department request-]~~.

#### R432-700-14. Acceptance Criteria.

- (1) The home health agency shall develop written acceptance criteria and shall make these policies available to the public upon request.
- (2) The home health agency shall accept ~~p~~Patients ~~[shall be accepted-]~~for treatment if the patient's needs can be met by the home health agency in the patient's place of residence. The home health agency shall base the acceptance determination on an assessment using the following criteria:
- (a) ~~[F]~~the patient needs skilled nursing services which meet the following criteria~~[-to determine whether a service is skilled, the following criteria shall apply-]~~:
  - (i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel~~[-]~~;
  - (ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer~~[-]~~; and
  - (iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin~~[-]~~ and a fractured leg in a cast~~[-]~~;
  - (b) ~~[T]~~the patient needs therapy services or support services;
  - (c) ~~[T]~~the patient, responsible family members, guardians or legal representatives~~[-and family-]~~ request care at home; or
  - (d) ~~[T]~~the physical facilities in the patient's place of residence can be adapted to provide a safe environment for care.

#### R432-700-15. Termination of Services Policies.

- (1) The home health agency may discharge a patient under one or more~~[-any-]~~ of the following circumstances:
- (a) ~~[A]~~a licensed practitioner signs a discharge statement for termination of services;
  - (b) ~~[T]~~treatment objectives are met;
  - (c) ~~[T]~~the patient's status changes, which makes treatment objectives unattainable~~[-]~~ and new treatment objectives are not an alternative;
  - (d) ~~[T]~~the family situation changes and affects the delivery of services;
  - (e) ~~[T]~~the patient or family is uncooperative in efforts to attain treatment objectives;
  - (f) ~~[T]~~the patient moves from the geographic area served by the home health agency;
  - (g) ~~[T]~~the ~~[physician]~~primary care provider fails to renew orders as required by the rules for skilled nursing or therapy services, or~~[-]~~ the patient changes ~~[physician's]~~primary care providers and the home health agency cannot obtain orders for continuation of services from the new ~~[physician]~~primary care provider;

(h) ~~[F]~~the patient's payment sources are exhausted and the home health agency is fiscally unable to provide free or ~~[part-~~~~cost]~~reduced care;

(i) ~~[F]~~the home health agency discontinues a particular service or terminates ~~[all]~~services;

(j) ~~[F]~~the home health agency can no longer provide quality care in the place ~~[for]~~of residence;

(k) ~~[F]~~the patient or family requests home health agency services to be discontinued;

(l) ~~[F]~~the patient dies;

(m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or

(n) ~~[F]~~the patient's pay~~[e]~~er excludes the home health agency from participating as a covered provider or refuses to authorize services the home health agency determines are medically necessary.

(2) The person who is assigned to supervise and coordinate care for a particular patient ~~[must]~~shall complete a discharge summary when services to the patient are terminated.

#### **R432-700-16. Patients' Rights.**

(1) Written patients' rights shall be established by the home health agency and made available to the patient, guardian, next of kin, sponsoring agency, representative payee~~[s]~~ and the public.

(2) Home health a~~[A]~~gency policy ~~[may]~~shall determine how patients' rights information is distributed.

(3) The home health agency shall ~~[i]~~ensure that each patient receiving care has the following rights:

(a) ~~[F]~~to be fully informed of these rights and ~~[all]~~rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) ~~[F]~~to be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of ~~[all]~~changes in charges;

(c) ~~[F]~~to be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) ~~[F]~~to be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) ~~[F]~~to refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;

(f) ~~[F]~~to be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the home health agency, except in the case of transfer to another home health agency or health facility, or as required by law or third-party payment contract;

(g) ~~[F]~~to be treated with consideration, respect~~[s]~~ and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) ~~[F]~~to be assured the patient~~[-and the]~~ family members or ~~[significant]~~other~~[s]~~ individuals providing care to the patient will be taught about required services, so the patient can develop or regain self-care skills and the family members or other~~[s]~~ individuals providing care to the patient can understand and help the patient;

(i) ~~[F]~~to be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) ~~[F]~~to receive proper identification from the individual providing home health services; and

(k) ~~[F]~~to receive information concerning the procedures to follow to ~~[voice]~~submit complaints about services being performed.

#### **R432-700-17. ~~[Physician's]~~Primary Care Provider Orders.**

(1) ~~[Physician's]~~Primary care provider orders shall be incorporated into the plan of care when skilled care is being provided.

(2) ~~[Physician's]~~Primary care provider orders in Subsection (1) may include:

(a) ~~[D]~~diet and nutritional requirements;

(b) ~~[M]~~medications;

(c) ~~[F]~~frequency and type of service;

(d) ~~[F]~~treatments;

(e) ~~[M]~~medical equipment and supplies; and

(f) ~~[P]~~prognosis.

#### **R432-700-18. Patient Records.**

(1) The home health agency shall develop and implement record~~[-]~~keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention~~[s]~~ and storage.

(2) Records in Subsection (1) shall be maintained in an organized format.

(3) To facilitate locating each patient's current or closed record, ~~[F]~~the home health agency shall maintain a~~[a]~~ patient record identification system~~[-to facilitate location of each patient's current or closed record]~~.

(4) An accurate, up-to-date record ~~[must]~~shall be maintained by the home health agency, for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence ~~[must]~~shall enter a clinical note of that contact or service in the patient's record.

(6) ~~[All-e]~~Entries in Subsection (5) shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.

(7) Services provided by the home health agency and outcomes of these services ~~[must]~~shall be documented in the individual patient record.

(8) Each patient~~[s]~~ record shall contain at least the following information:

(a) ~~[I]~~identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible ~~[person]~~individual, name and telephone number of ~~[physician]~~the primary care provider with ~~[primary]~~responsibility for patient care, and ~~[if applicable,]~~the name and telephone number of ~~[the]~~any person or family member who~~[-in addition to agency staff]~~ provides care in the place of residence;

(b) ~~[A]~~a written plan of care;

(c) ~~[A]~~a signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;

(d) ~~[R]~~reasons for referral to the home health agency;

(e) ~~[S]~~statement of the suitability of the patient's place of residence for the provision of health care services;

(f) ~~[D]~~documentation of telephone consultation or case conferences with other individuals providing services;

(~~[j]~~g) ~~[S]~~signed and dated clinical notes for each patient contact or home visit including services provided; and

(h) ~~[A]~~a written ~~[F]~~termination of ~~[S]~~services summary which describes:

(i) ~~[F]~~the care or services provided;

(ii) ~~[F]~~the course of care and services;

(iii) ~~[F]~~the reason for discharge;

(iv) ~~[F]~~the status of the patient at time of discharge; and

(v) ~~[F]~~the name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services, the home health agency shall include the following items [shall be included] in the patient record in addition to the items under Subsection [R432-700-48](8):

- (a) [D] diagnosis;
- (b) [P] pertinent medical and surgical history;
- (c) [A] a list of medications and treatments;
- (d) [A] allergies or reactions to drugs or other substances;
- (e) clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as:
  - (i) a hospital;
  - (ii) an ambulatory surgical center;
  - (iii) a nursing home;
  - (iv) a primary care providers or consultant's office; or
  - (v) other home health agency; and
- (f) [E] clinical notes to include a description of the patient condition and significant changes such as:
  - (i) [O] objective signs of illness, disorders[,] and body malfunction;
  - (ii) [S] subjective information from the patient and family;
  - (iii) [G] general physical condition;
  - (iv) [G] general emotional condition;
  - (v) [P] positive or negative physical and emotional responses to treatments and services;
  - (vi) [G] general behavior; and
  - (vii) [G] general appearance.
- (f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.]

#### **R432-700-19. Confidentiality and Release of Information.**

- (1) The home health agency [must] shall develop and implement policies and procedures to safeguard patient records against loss, destruction[,] or unauthorized use.
- (2) [There] The home health agency shall [be] have written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
- (3) The home health agency shall keep [P] patient records [shall be] confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules[,] and local laws.
- (4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
- (5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
- (6) The home health agency shall make [P] provisions [shall be made] for filing, safe storage[,] and easy access [ability of] to medical records.

#### **R432-700-20. Quality Assurance.**

- (1) The quality, appropriateness[,] and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting home health agency objectives.

(2) The administrator shall conduct an annual evaluation of the home health agency's overall program and submit a written report of the findings to the governing body.

(3) The home health agency shall demonstrate concern for cost of care by evaluating [on of the following]:

- (a) [R] relevance of health care services;
- (b) [A] appropriateness of treatment frequency;
- (c) [U] use of less expensive, but [still] effective[,] resources whenever possible; and
- (d) [U] use of ancillary services consistent with patient needs.
- (4) An interdisciplinary quality assurance committee shall evaluate patient services on [at least] a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the home health agency.
- (a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.
- (b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.

(5) The methodology for evaluation by the quality assurance committee shall include [but is not limited to]:

- (a) [R] review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Home health a [A] agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records [Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period];
- (b) [R] review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences; and
- (c) [R] review and evaluation of plans of treatment for content, frequency of updates[,] and whether clinical notes correspond to goals written in the plan of care.

#### **R432-700-21. Nursing Services.**

- (1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
- (2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
- (3) When a [a] home health agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
- (4) The n [N] uring staff of the home health agency shall observe, report[,] and record written clinical notes.
- (5) Nursing services provided through a home health agency shall [should] recognize and use opportunities to teach health concepts to the patient and family.
- (6) [All r] Registered nurses or licensed practical nurses employed by[,] or [on] contracted with[,] the home health agency shall have a valid license from the Utah Department of Commerce [Title 58, Chapter 31b].
- (7) A l [L] icensed nurse[s] of the home health agency shall [have] include the following responsibilities:
  - (a) [A] administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
  - (b) [P] perform nursing care according to the needs of the patient and as indicated in the written plan of care;



(c) ~~[I]~~inform the ~~[physician]~~primary care provider and other personnel of changes in the patient's condition and needs;

(d) ~~[W]~~write clinical notes in the individual patient record for each visit or contact;

(e) ~~[T]~~teach self-care techniques to the patient or family, or both;

(f) ~~[D]~~develop plans of care; and

(g) ~~[P]~~participate in in-service programs.

(8) The director of nursing services of the home health agency shall be responsible for and shall be accountable for the following functions:

(a) ~~[D]~~designate a registered nurse to act as director of nursing services during ~~[his]~~their absence;

(b) ~~[A]~~assume responsibility for the quality of nursing services provided by the home health agency;

(c) ~~[D]~~develop nursing service policies and procedures that ~~[must]~~shall be reviewed annually and revised as necessary;

(d) ~~[E]~~establish work schedules for nursing personnel according to patient needs;

(e) ~~[A]~~assist in development of job descriptions for nursing personnel;

(f) ~~[C]~~complete performance evaluations for nursing personnel according to home health agency policy; and

(g) ~~[D]~~direct in-service programs for ~~[all]~~nursing personnel.

(9) In addition to the ~~[general]~~responsibilities in Subsection (7), a registered nurse of the home health agency shall ~~include~~have the following responsibilities:

(a) ~~[M]~~make the initial nursing evaluation visit;

(b) ~~[R]~~re-evaluate nursing needs based on the patient's status and condition;

(c) ~~[I]~~initiate the plan of care and make necessary revisions;

(d) ~~[P]~~provide services ~~that~~which require specialized nursing skills;

(e) ~~[I]~~initiate appropriate preventive and rehabilitative nursing procedures;

(f) ~~[S]~~supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree of supervision needed;

(g) ~~[A]~~assist in coordinating ~~[all]~~services provided;

(h) ~~[P]~~prepare termination of services statements;

(i) ~~[S]~~supervise and consult with licensed practical nurses as necessary;

(j) ~~[P]~~provide written instructions for a certified nursing aide to ensure provision of required services written in the plan of care;

(k) ~~[S]~~supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone; and

(l) ~~[M]~~make supervisory visits with or without the certified nursing aide's presence as follows:

(i) ~~[I]~~initial assessment;

(ii) ~~[E]~~every two weeks to patients who receive skilled services;

(iii) ~~[E]~~every three months to patients who require long-term maintenance services; and

(iv) ~~[A]~~any time there is a question of change in the patient's condition.

(10) The licensed practical nurse of the home health agency shall ~~have~~include the following responsibilities:

(a) ~~[W]~~work under the supervision of a registered nurse;

(b) ~~[O]~~observe, record~~[s]~~ and report to the immediate supervisor the general physical or mental condition of the patient;

(c) ~~[A]~~assist the registered nurse in performing specialized procedures; and

(d) ~~[A]~~assist in development of the plan of care.

#### **R432-700-22. Certified Nursing Aide.**

(1) ~~A c~~[C]ertified nursing aide~~[s]~~ of the home health agency may have the following responsibilities:

(a) ~~[P]~~provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor~~[-I]~~. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(b) ~~[P]~~perform normal household services essential to health care at home;

(c) ~~[M]~~make occupied or unoccupied beds;

(d) ~~[S]~~supervise the patient's self-administration of medication~~[-by]~~;

~~(i) Reminding the patient it is time to take medications;~~

~~(ii) Opening the bottle cap;~~

~~(iii) Reading the medication label to patients;~~

~~(iv) Checking the self-administered dosage against the label of the container;~~

~~(v) Reassuring the patient that the dose being taken is correct;~~

~~(vi) Observing the patient taking the medication.];~~

(e) ~~[O]~~observe, record and~~[-or]~~ report basic patient status;

(f) ~~[P]~~perform activities of daily living as written in the plan of care;

(g) ~~[G]~~give nail care as described in the plan of care;

(h) ~~[O]~~observe and record food and fluid intake when ordered;

(i) ~~[C]~~change dry dressings according to written instructions from the supervisor;

(j) ~~[A]~~administer emergency first aid;

(k) ~~[P]~~provide escort and transportation to ~~[doctor's]~~ appointments ~~[and elsewhere as part of]~~for patient~~[-]~~ care services;

(l) ~~[P]~~provide social interaction and reassurance to the patient and family in accordance with the plan of care; and

(m) ~~[W]~~write clinical notes in individual patient records.

(2) ~~A c~~[C]ertified Nursing Aide~~[s]~~ shall be at least 18 years old.

(3) ~~A c~~[C]ertified Nursing Aide~~[s]~~ shall have ~~[received]~~a certificate of completion for the employment position within six months of the date of hire.

(4) ~~A c~~[C]ertified Nursing Aide~~[s]~~ ~~[must]~~shall be certified in CPR~~[cardiopulmonary resuscitation]~~ and emergency procedures.

#### **R432-700-23. Personal Care Aides.**

(1) ~~A p~~[P]ersonal care aide~~[s]~~ shall be at least 18 years of age and ~~have~~include the following responsibilities:

(a) ~~[R]~~receive written instructions from the supervisor;

(b) ~~[P]~~perform only the tasks and duties outlined in the service agreement;

(c) ~~[H]~~have knowledge of home health agency policy and procedures;

(d) ~~[B]~~be trained in first aid;

(e) ~~[B]~~be oriented and trained in ~~[all]~~aspects of care to be provided to clients;

(f) ~~[B]~~be able to demonstrate competency in ~~[all]~~areas of training for personal care; and

(g) ~~[M]~~maintain a minimum of six hours of in-service training per calendar year, prorated for the first year of employment~~[s]~~.

(2) ~~A p~~[P]ersonal Care Aide~~[s]~~ may assist clients with the following activities:

(a) ~~[S]~~self-administration of medications by:

## NOTICES OF PROPOSED RULES

- (i) reminding the client to take medications, and
  - (ii) opening containers for the client;
  - (b) ~~[H]~~housekeeping;
  - (c) ~~[P]~~personal grooming and dressing;
  - (d) ~~[E]~~ating and meal preparation;
  - (e) ~~[O]~~ral hygiene and denture care;
  - (f) ~~[T]~~oileting and toilet hygiene;
  - (g) ~~[A]~~arranging for medical and dental care including transportation to and from ~~[the]~~appointments;
  - (h) taking and recording oral temperatures;
  - (i) ~~[A]~~administering emergency first aid;
  - (j) ~~[P]~~roviding or arranging for social interaction; and
  - (k) ~~[P]~~roviding transportation.
- (3) A p~~[P]~~ersonal Care Aide[s] shall document observations and services in the individual client record.

### R432-700-24. Plan of Care.

- (1) For each patient, the home health agency shall:
- (a) establish a plan of care for any care, services, or treatment provided by:
    - (i) the home health agency; or
    - (ii) any indirect contracted services;
  - (b) describe the plan of care under Subsection (a) in the patient's record; and
  - (c) document the activities of the home health agency or indirect contracted services to implement the plan of care under Subsection (1) in the patient's record.~~[A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.]~~
- (2) ~~[A]~~The plan of care under Subsection (1) shall be developed and signed by a licensed health care professional.
- (3) The plan of care under Subsection (1) shall be developed with consultation~~[as needed,]~~ from other home health agency staff or contract personnel.
- (4) Modifications or additions to the initial plan of care shall be made by a licensed health care professional as necessary.
- (5) Each plan of care under Subsection (1) shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.
- (6) For patients receiving skilled services, the written plan of care under Subsection (1) shall be approved by a ~~[physician]~~primary care provider at intervals not to exceed 63 days.
- (7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending ~~[physician]~~primary care provider and other home health agency staff of any significant changes in the patient's status.
- (8) ~~[All care plans and n]~~Notifications under Subsection (7) shall be made part of the patient's record.
- (9) The plan of care under Subsection (1), ~~[usually]~~ developed in accordance with the referring ~~[physician's]~~primary care provider's orders, shall include:
- (a) ~~[N]~~name of the patient;
  - (b) ~~[D]~~diagnoses~~[(required for patients receiving skilled services)]~~;
  - (c) ~~[T]~~treatment goals stated in measurable terms;
  - (d) ~~[S]~~services to be provided, at what intervals, and by whom;
  - (e) ~~[N]~~needed medical equipment and supplies;
  - (f) ~~[M]~~medications to be administered by designated, licensed home health agency personnel;
  - (g) ~~[S]~~supervision of self-administered medication;
  - (h) ~~[D]~~diet or nutritional requirements;

- (i) ~~[N]~~ecessary safety measures;
- (j) ~~[I]~~nstructions~~[-if any,]~~ to patient and~~[for]~~ family; and
- (k) ~~[D]~~ate plan was initiated and dates of subsequent review.

### R432-700-25. Medication and Treatment.

(1) Skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. The~~[is]~~ order may be remotely given but shall be subsequently signed by the person giving the order within 31 days.

(2) Medications shall be administered according to signed orders from a person lawfully authorized to give the order. The~~[is]~~ order may be remotely given but shall be subsequently signed by the person giving the order within 31 days.

(3) ~~[All o]~~Orders remotely given shall be received and verified only by licensed personnel lawfully authorized to accept the order. Remotely given orders shall be recorded in the patient's record.

(4) If medications are administered by home health agency personnel, the orders and subsequent changes in orders~~[-]~~ shall be signed by the ~~[physician]~~primary care provider and included in the patient's record.

(5) Unlicensed staff may administer medications only after delegation by a licensed health care professional under the professional scope of practice with the following requirements~~[-]~~:

~~[(i) a] [If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, -]the delegation shall be in accordance with [the Nurse Practice Act and] Section R156-31B-701;~~

~~[(ii) b] [T]he medications [must]shall be administered according to the prescribing order;~~

~~[(iii) c] [T]he delegating authority [must]shall provide and document supervision, evaluation[-] and training of unlicensed assistive personnel assisting with medication administration; and~~

~~[(iv) d] [T]he delegating authority or another registered nurse shall be readily available either in person or by telecommunication[-] and]~~

~~[-] (v) Delegation to unlicensed staff shall not include delegating medication set up for subsequent medication administration.]~~

(6) Orders for therapy services shall include the procedures to be used, the frequency of therapy~~[-]~~ and the duration of therapy.

(7) Orders for skilled services shall be reviewed or renewed by the attending ~~[physician]~~primary care provider at intervals not to exceed 63 days. ~~[Physician]~~Primary care provider's signature and date shall be evidence of this review or renewal.

(8) ~~[Physician]~~Primary care provider orders may be transmitted by facsimile machine. The home health agency ~~[must be able to]~~shall obtain the original signature, upon request, if verification of the signature is requested.

### R432-700-26. Therapy Services.

(1) Physical, occupational, speech~~[-]~~ and nutrition therapy services offered by the home health agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care~~[-under Title 58]~~.

(2) The qualified therapist in Subsection (1) shall have the following general responsibilities:

(a) ~~[P]~~provide treatment as ordered and approved by the attending ~~[physician]~~primary care provider;

(b) ~~[E]~~evaluate the home environment and make recommendations;

(c) ~~[D]~~develop the plan of care for therapy;

(d) ~~[O]~~observe and report findings about the patient's condition to the attending ~~[physician]~~primary care provider and other home health agency staff~~[,]~~ and document information in the patient's record;

(e) ~~[A]~~advise, consult~~[,]~~ and instruct ~~[when necessary,]~~ other home health agency personnel and family about the patient's therapy program;

(f) ~~[P]~~provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) ~~[S]~~supervise other home health agency personnel when appropriate; and

(h) ~~[P]~~participate in in-service programs.

(3) In addition to the general responsibilities in Subsection (2), a physical, speech, or occupational therapist may perform the following:

(a) ~~[P]~~provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) ~~[S]~~supervise aides in the patient's home as necessary, and be readily available for consultation by phone; and

(c) ~~[M]~~make supervisory visits with or without the aide's presence, as required.

#### **R432-700-27. Medical Supplies and Equipment.**

~~[(4)]~~The home health agency shall develop and follow written medical supply policies and procedures which describe:

~~[(a)1]~~ ~~[A]~~home health agency provision of or use of durable medical equipment~~[,]~~ and disposable ~~[and semi-disposable]~~ medical supplies;

~~[(b)2]~~ ~~[C]~~categories of medical supplies and equipment available through the home health agency;

~~[(e)3]~~ ~~[C]~~charges and reimbursement for medical supplies and equipment; and

~~[(d)4]~~ ~~[P]~~processes for billing medical supplies and equipment to the patient, insurance carrier, or an other payment source.

#### **R432-700-28. Emergency and After-Hours Care.**

Emergency and after-hours care shall be described in home health agency written policies and procedures and made available to the patient and family.

#### **R432-700-29. Social Services.**

(1) When medical social services are provided by the home health agency, the~~[,]~~ services shall be provided by a certified social worker ~~[(CSW)]~~ or by a social service worker ~~[(SSW)]~~ supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker in Subsection (1) shall be responsible to:

(a) ~~[A]~~assist team members in understanding significant social and emotional factors related to health problems;

(b) ~~[P]~~participate in the development of the plan of care;

(c) ~~[P]~~prepare clinical notes according to rules and home health agency policy;

(d) ~~[U]~~utilize community resources; and

(e) ~~[P]~~participate in in-service programs.

#### **R432-700-30. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and Section R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

**KEY: health care facilities**

**Date of Last Change: 2022~~October 17, 2017~~**

**Notice of Continuation: August 13, 2021**

**Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R527-40

**Filing ID**  
54169

#### **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nick Buchei	801-741-7520	nabuchei@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

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

#### **General Information**

##### **2. Rule or section catchline:**

R527-40. Retained Support

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.

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

This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

**B) Local governments:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

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

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

The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

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

Section 62A-11-107	Section 62A-11-307.1	Section 62A-11-304.1
Section 62A-1-111	Section 62A-11-307.2	

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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**R527. Human Services, Recovery Services.****R527-40. Retained Support.****R527-40-1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for ~~the provision of~~ social services ~~by~~ pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary ~~by~~ pursuant to Section 62A-11-107.

(2) The purpose of this rule is to define ~~["]~~retained support~~["]~~ in regards to a child support case, and to provide details as to how the amount owed is calculated once a retained support case ~~has been~~ is opened for an obligee who has retained payments that were assigned to the state.

**R527-40-2. Retained Support.**

(1) ~~The term "Retained [S]support"~~ refers to a situation ~~in which~~ when an obligee who has assigned support rights to the state has received child support but failed to forward the payment~~(s)~~ to ORS.

(2) ~~The agent will refer the case~~ If support has been retained, a referral to recoup the retained support ~~to the appropriate child support team with~~ and the supporting evidence may be sent to the appropriate ORS team to open a recovery case~~to support the referral~~.

~~(3) In computing the amount owed, the obligee will be given credit for the \$50 pass through payment for any months prior to March, 1997, in which support was retained by the client. For example, if the obligee received and kept a support payment of \$200 in February, 1997, the referral will be made as a \$150 debt. For support payments retained on or after March 1, 1997, no credit shall be given because there will be no pass through payments for support payments made after February 28, 1997.]~~

**R527-40-3. Recoupment of Public Assistance Overpayment[s/ or Retained Support.**

For this subsection, the obligee who retained support on the child support case becomes the obligor on the new case to recover the retained support.

(1) ~~If the [O]obligor is not receiving assistance[.];~~  
(a) ~~[F]the obligor will be asked to complete an income asset affidavit[.];~~

(b) ~~[F]the total liability shall be reviewed with the obligor[.]; and,~~

(c) ~~[F]the obligor will be requested to pay the[total] obligation in full.~~

~~([d]2) If total payment is not possible, the following will be reviewed: [type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.]~~

~~(a) type of debt;~~

~~(b) anticipated length of time to repay the debt;~~

~~(c) total income, assets, and expenses of the obligor's household; and,~~

~~(d) any anticipated changes in the household circumstances.~~

~~([2]3) If the [O]obligor is receiving assistance, [.]~~

~~(a) P] payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent[ in accordance with rule or federal regulation].~~

**KEY: child support, public assistance overpayments**

**Date of Last Change: 2022[March 9, 2016]**

**Notice of Continuation: August 28, 2019**

**Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-304.1; 62A-11-307.1[3]; 62A-11-307.2[3]**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R527-300

**Filing ID**  
54111

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jodi Witte	801-741-7417	jwitte@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

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

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

R527-300. Income Withholding

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.

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

This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

**B) Local governments:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non small businesses.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to Persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

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

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 62A-1-111	Section 62A-11-107	45 CFR 303.100
Rule R527-303		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	01/14/2022

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/01/2021
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**R527. Human Services, Recovery Services.****R527-300. Income Withholding.****R527-300-1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for ~~[the provision of]~~ social services ~~[by]~~ pursuant to Section[s] 62A-1-111 ~~[and]~~. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to 62A-11-107. ORS is authorized to terminate income withholding pursuant to 45 CFR 303.100(a)(7).

(2) ~~[The Office of Recovery Services (ORS) is authorized to use income withholding to collect child support by Section 62A-11-401.]~~ The purpose of this rule is to specify ~~[the responsibilities and]~~ ORS procedures ~~[for ORS related to]~~ for income withholding.

**[R527-300-2. Determining Delinquency.**

~~(1) Delinquency occurs when:~~

~~(a) a current support has been ordered but is not presently in effect and the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month;~~

~~(b) the result of an underpayment for several months totals at least one month's current support;~~

~~(c) an obligor was ordered to pay on specific days of the month and failed to do so; or~~

~~(b) there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.~~

~~(2) Pursuant to Section 62A-11-405, orders issued prior to October 13, 1990 and not otherwise modified after that date require ORS to establish that a delinquency occurred under the order prior to utilizing income withholding.~~

**R527-300-3. Affidavit of Delinquency.**

~~(1) The ORS verified statement or affidavit alleging that a delinquency has occurred pursuant to Section 62A-11-405 is satisfied in the following ways:~~

~~(a) for time periods when a statement of arrears was part of the child support application for services packet, the Non-IV-A applicant's prepared month by month computation of the support debt with an attestation that the statement is true and accurate to the best knowledge and belief of the applicant; or~~

~~(b) calculations of delinquencies provided by Title IV-D agencies in other states on incoming intergovernmental cases where the referring state requested the collection of delinquent support.~~

**R527-300-4. Income Subject To Withholding.**

~~(1) In accordance with Section 62A-11-406, income subject to withholding is as follows:~~

~~(a) income withholding will be limited to withholding 50% of the obligor's disposable income; or~~

~~(b) if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.]~~

**R527-300-[5]2. Income Withholding Termination.**

(1) Income withholding administratively initiated by ORS shall be terminated if:

(a) the obligor no longer has an obligation for current child support and:

~~[(i) no longer has an obligation for current child support; and]~~

~~[(ii)](i) no longer has a debt to Utah or another state on whose behalf Utah is acting, or to a [N]non-IV-A obligee on whose behalf Utah is acting;~~

~~(ii) successfully contests the withholding currently in effect through the court or administrative review process; or~~

~~(iii) has entered into an Automatic Payment Withdrawal plan with ORS pursuant to Rule R527-303.~~

(b) the [N]non-IV-A applicant:

(i) terminates the ORS[CSS] case; and

(ii) the obligor no longer owes child support to Utah or another state on whose behalf Utah is acting~~[-or]~~.

## NOTICES OF PROPOSED RULES

~~[(c) the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.]~~

### **R527-300-3. Income Withholding Reinstatement.**

- (1) Income withholding may be reinstated if:
- (a) income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent by at least one month's support;
- (b) ORS resumes collection of support on behalf of the state, another state or a non-IV-A obligee; or
- (c) the obligor fails to abide by the Automatic Payment Withdrawal plan with ORS.

**KEY:** child support, income, wages

Date of Last Change: 2022 February 10, 2021

Notice of Continuation: January 23, 2017

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; ~~62A-11-401 et seq.; 62A-11-405~~ 45 CFR 303.100; R527-303

### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R527-301</b>	<b>Filing ID</b>	<b>54167</b>
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### **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

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

### **General Information**

<b>2. Rule or section catchline:</b>
R527-301. Non-IV-D Income Withholding

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.

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

This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

### **Fiscal Information**

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

#### **A) State budget:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

#### **B) Local governments:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It



is not anticipated that this amendment would create a fiscal cost or savings to other 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 associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses because this rule is being amended. 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.)

**Regulatory Impact Table**

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

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

The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

**Citation Information**

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

Section 62A-1-111	Section 62A-11-107	Section 62A-11-502
Section 62A-11-504	Section 62A-11-506	Section 62A-11-508

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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**R527. Human Services, Recovery Services.**

**R527-301. Non-IV-D Income Withholding.**

**R527-301-1. Authority and Purpose.**

(1)[-] The Department of Humans Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules [as necessary by] pursuant to Section 62A-11-107.

(2)[-] The purpose of this rule is to provide information about the [requirements of the Office of Recovery Services in regards to Non-IV-D Income Withholding] responsibilities, requirements and procedures for non-IV-D income withholding services through ORS. [The rule states who can request income withholding and the proper procedures to pursue income withholding.]

**R527-301-2. Responsibilities[y] of [the Office of Recovery Services] ORS in a Non-IV-D Income Withholding Case.**

(1) ORS will: [The responsibilities of the Office of Recovery Services in regard to Non-IV-D Income Withholding are limited to]

(a) receive[ing the] income withholding[;];

(b) process[ing] the payment[;];

## NOTICES OF PROPOSED RULES

(c) issue~~[ing a]~~ the payment to the custodial parent at their known address~~[-]; and~~  
 (d) maintain~~[ing]~~ a payment record; and~~[-]~~  
 (e) close its case if a copy of an order terminating income withholding is provided to ORS.

(2) ~~[Modifications to the support order or withholding amounts are the responsibility of the parents.]~~ORS will not:

(a) collect child care expenses;  
 (b) modify the support order or withholding amounts;  
 (c) obtain an order terminating the income withholding order;

or

(d) utilize any enforcement or collection methods available to assist with debt collection in addition to the Income Withholding Order.

### **R527-301-3. [Child Support Order Does Not Require Immediate]Modification of Income Withholding Order.**

~~[Either party to the support order may pursue.]~~If the income withholding ~~[by]~~order needs to be modified, a parent may:~~[filing for an Order/Notice to Withhold in the court, by]~~

(1) ~~[a]~~Apply~~[ing]~~ for IV-D ~~[child support enforcement]~~services through ORS~~[-]; or~~~~[-by]~~

(2) ~~[receiving IV-A assistance]~~Take further judicial action in the court that issued the support order.

### **R527-301-4. [Collection of Child Care Expenses Through Income Withholding]ORS Procedure if Custodial Parent's Mailing Address is Unknown.**

~~[Child care expenses shall not be collected through Non-IV-D Income Withholding.]~~(1) The custodial parent should notify ORS of a change in their mailing address.

(2) If ORS determines that the custodial parent's address is unknown, ORS will hold the payments received through income withholding for 60-days and during the 60-day period will use available resources to make at least one attempt to locate the custodial parent.

(3) If at the end of the 60-day period the custodial parent's address remains unknown, ORS will refund the support payment to the non-custodial parent.

(4) The support will not accrue interest during the time it is held to attempt to locate the custodial parent.

### **[R527-301-5. Enforcement of Notice to Withhold When Payor Fails to Comply.**

~~If a payor fails to comply with the Notice to Withhold, either the custodial parent or the non custodial parent may proceed with judicial action against the employer to enforce the Notice to Withhold and to obtain a judgment in accordance with Subsections 62A-11-506(1)(f), (j) and (k).~~

### **R527-301-6. Modification of Income Withholding Amount.**

~~If the Notice to Withhold needs to be modified for any reason, the parent must apply for IV-D services or file for an Order/Notice to Withhold in the court that issued the support order.~~

### **R527-301-7. Custodial Parent's Failure to Keep Office Notified of Mailing Address.**

~~The office shall hold income withholding payments for 60 calendar days after the office determines that the custodial parent's address is unknown. During this 60 day period, the office shall make one attempt to locate the custodial parent, using resources available to the office. If the custodial parent's address is still unknown at the end of 60 calendar days, the office shall refund the support to the non-custodial~~

~~parent. The support shall not accrue interest during the time it is being held to locate the custodial parent.~~

### **R527-301-8. Termination of Income Withholding.**

~~At any time after the date income withholding begins, a party to the child support order may request a judicial hearing to determine whether income withholding should be terminated. If the court orders that income withholding should be terminated, the obligee will provide written notice of termination to each payor of income.]~~

**KEY: child support**

**Date of Last Change: 2022[October 1, 2009]**

**Notice of Continuation: December 15, 2017**

**Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-502; 62A-11-504; 62A-11-506; 62A-11-508**

## **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R527-305</b>	<b>Filing ID</b> <b>54172</b>
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## **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jodi Witte	801-741-7417	jwitte@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

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

## **General Information**

### **2. Rule or section catchline:**

R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.

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

This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

#### Fiscal Information

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

**A) State budget:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

**B) Local governments:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

**Regulatory Impact Table**

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

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

The Executive Director of 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:**

42 U.S.C. 666	Section 62A-1-111	Section 62A-11-107
Section 62A-11-305		

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	01/14/2022
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<b>10. This rule change MAY become effective on:</b>	01/21/2022
--	------------

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**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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**R527. Human Services, Recovery Services.****R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases.****R527-305-1. Authority and Purpose.**

(1)[.] The Department of Human Services is authorized to create rules necessary for [the provision of] social services [by] pursuant to Section [62A-11-107] 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107. [Section 62A-11-111 provides for collection with liens and the disposition of property acquired by the department.]

(2)[.] [This rule establishes procedures for High Volume, Automated Administrative Enforcement in Interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14) of the Social Security Act.] The purpose of this rule is to establish procedures when a request is received from a IV-D child support agency of another state for high-volume, automated administrative enforcement of support orders pursuant to 42 U.S.C. 666(a)(14) and Section 62A-11-305.

**R527-305-2. Purpose.**

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS), when a request is received from a IV-D child support agency of another state for high-volume, automated administrative enforcement of support orders.

**R527-305-[3]2. Definitions.**

(1)[.] "High-Volume, Automated Administrative Enforcement" means the use of automated data processing to search Utah databases to determine whether information is available regarding a parent who owes child support in the initiating state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases. ["Requesting State" means the state sending an administrative interstate enforcement request to the assisting state.]

(2) "Initiating state" means another state's Title IV-D agency that sends an administrative interstate enforcement request to the responding state for assistance.

[(2)3][.] ["Assisting State" means the state matching the requesting state's delinquent]"Responding state" means the state Title IV-D agency, or ORS, that matches the initiating state's obligors against databases and, if appropriate, seizing assets on behalf of the [requesting] initiating state.

[3. "High Volume, Automated Administrative Enforcement in Interstate Cases" means the use of automated data processing to search the assisting state's databases to determine whether information is available regarding parents who owe child support in the requesting state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases.

4. "IV-D agency" means an agency authorized by Title IV, Section D of the Social Security Act to administer child support services and collections.]

**R527-305-[4]3. Procedures for High-Volume, Automated Administrative Enforcement of Interstate Referrals.**

[The procedures below apply whenever ORS/CSS receives a request for high-volume, automated administrative enforcement of interstate cases from another state's IV-D agency.]

(1)[.] [Another] An initiating state may [transmit] send a request for automated administrative enforcement of support orders to ORS[CSS] by electronic or other means. The [requesting] initiating state may [transmit] send a single high-volume referral that includes multiple requests.

(2)[2.] A request for automated administrative interstate enforcement shall not be considered a transfer of the cases referred to the ORS[CSS] caseload.

(3)[3.] ORS[CSS] will conduct a match of the referral data against the Utah[state] databases [to which it] that ORS has access to, determine if information regarding the obligor is available[OR/CSS will], and notify the [requesting] initiating state of the results of the search.

(4)[.] ORS[CSS] will give an automated administrative interstate enforcement request the same priority it gives to a regular interstate case referred by another state for collection services or establishment, modification, or registration of an order.

**KEY:** child support, interstate

**Date of Last Change:** 2022[April 21, 2008]

**Notice of Continuation:** December 15, 2017

**Authorizing, and Implemented or Interpreted Law:** 42 U.S.C. 666; 62A-1-111; 62A-11-107; 62A-11-305

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R527-430</b>	<b>Filing ID</b>
		<b>154170</b>

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R527-430. Administrative Notice of Lien-Levy Procedures
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the Administrative Rulewriting Manual.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.
<b>B) Local governments:</b>
The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It

is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

## NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.			

## Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 62A-11-107	Section 62A-11-303	Subsection 62A-11-304.1(5)(b)
Section 62A-1-111	Section 62A-11-401	Subsection 62A-11-304.1(5)(a)
Section 62A-11-103		

## Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	01/14/2022
<b>10. This rule change MAY become effective on:</b>	01/21/2022

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

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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## R527. Human Services, Recovery Services.

## R527-430. Administrative Notice of Lien-Levy Procedures.

## R527-430-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to provide a process for an unobligated spouse to contest a Notice of Lien-Levy placed by ORS on a jointly owned financial account or a non-means tested lump sum payment, judgment, settlement or lottery, where the unobligated spouse is a joint recipient. This rule establishes procedures for ORS to determine the amount that a financial institution or payor should release to the unobligated spouse.

[— This rule establishes procedures for Notice of Lien and Levy pursuant to Subsections 62A-11-103(4), (14); 62A-11-104(9); 62A-11-304.1(1)(h)(i)(A) and (B), (1)(h)(ii), (1)(h)(iii), (1)(h)(iv), (2), (5)(b); 62A-11-304.5 (1)(b); and Section 62A-11-313.]

## [R527-430-2. Purpose.

The purpose of this rule is to provide procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to determine the amount that a financial institution or payor should release to an unobligated spouse who jointly owns a financial account, as defined in Subsection 62A-11-103(4), or who is a joint recipient of a non-means tested lump sum payment, judgment, settlement, or lottery, when ORS/CSS has subjected the account, non-means tested lump sum payment, judgment, settlement, or lottery to a Notice of Lien-Levy, and the unobligated spouse has contested the action.]

## R527-430-[3]2. Definitions.

[— 1. Terms used in this rule are defined in Sections 62A-11-103, 62A-11-303 and 62A-11-401.]

[2-](1) [In addition, "[u]nobligated spouse" means a spouse and joint-owner of a financial account, [joint recipient] joint recipient of a non-means tested lump sum payment, judgment, settlement, or lottery who is not obligated [under] by the child support order that is the basis for the action.

(2) Other terms used in this rule are defined in Sections 62A-11-103, 62A-11-303 and 62A-11-401.

## R527-430-[4]3. [Procedures] Process for an Unobligated Spouse to Contest a Notice of Lien-Levy on Joint Financial Accounts, Non-means Tested Lump Sum Payments, Judgments, Settlements, and Lotteries].

[— The procedures below will apply when an unobligated spouse contests a Notice of Lien-Levy or a Notice of Lien-Levy, Lump Sum Payment upon a joint financial account or payor of a non-means tested payment, judgment, settlement, or lottery.]

~~[4-](1) [The]An unobligated spouse [must make]may contest a Notice of Lien-Levy by submitting a written request to ORS[CSS] to review the action. The written request must be submitted within 15 days of the date the [concurrent n]Notice of [H]Lien-[H]Levy was sent to the obligor and the unobligated spouse[ pursuant to Subsection 62A-11-304.1(5)(a)] at the last known address for the obligor.~~

~~[2-](2) In a case[s] that involves amounts from financial institutions, the unobligated spouse must provide ORS[CSS] with documentation of recent income, [and/or documentation of the sources of]deposit[s] information[ made to the financial account], or a combination of both. [Examples of income documentation include: copies of tax returns for the prior year with W-2's attached; or, copies of two or more recent pay records. Examples of documentation of deposits to a financial account include: receipts or statements which show the sources of deposits made to the financial institution for the current month and one or more prior months.]~~

~~(3) In a case[s] that involves amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, the unobligated spouse must provide ORS[CSS] with documentation of the [settlement]percentage that each recipient [should]may receive. [Examples of payment documentation include: written verification from the insurance company or other payor, a copy of the payment or settlement agreement, and/or a copy of a signed judgment.]~~

#### **R527-430-4. Procedures for Determining Amount Due to an Unobligated Spouse and Release.**

~~[3. ORS/CSS will determine the amount that the financial institution should release to the unobligated spouse based upon the proportionate share of the income earned by the unobligated spouse, or the proportionate share of deposits made to the financial account by the unobligated spouse, or a combination of the two methods. In cases that involve amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, ORS/CSS will determine the amount that the payor should release to the unobligated spouse based upon the validity of the documentation provided to ORS/CSS.]~~

~~[4-](1) If ORS[it is] determine[d]s that a portion of the property should be released to the unobligated spouse, ORS[CSS] will notify the financial institution or payor pursuant to Subsection 62A-11-304.1(5)(b).~~

~~(2) In a case that involves financial institutions, ORS will determine the amount that the financial institution should release to the unobligated spouse based upon the proportionate share of the income earned by the unobligated spouse, or the proportionate share of deposits made to the financial account by the unobligated spouse, or a combination of the two methods.~~

~~(3) In a case that involves amounts from a non-means tested lump sum payment, judgment, settlement, or lottery, ORS will determine the amount that the payor should release to the unobligated spouse based upon the validity of the documentation provided to ORS.~~

~~[5-](4) Upon receipt of a notice of release from ORS[CSS], the financial institution or payor shall release the property that is specified in the notice of release, but continue to secure the remaining property from unauthorized transfer or disposition until 21 days after the date the original Notice of Lien-Levy was sent, at which time the financial institution or payor shall surrender the remaining property to ORS[CSS] pursuant to Subsection 62A-11-304.1(5)(b).~~

**KEY: child support**

**Date of Last Change: 2022[March 18, 1999]**

**Notice of Continuation: December 15, 2017**

**Authorizing, and Implemented or Interpreted Law: 62A-11-304.1; 62A-11-107; 62A-11-103; 62A-11-303; 62A-11-401; 62A-11-111; 62A-11-304.5; 62A-11-313**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code** R527-450

**Ref (R no.):**

**Filing ID**

**54171**

#### **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

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

#### **General Information**

##### **2. Rule or section catchline:**

R527-450. Federal Tax Refund Intercept

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.

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

This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

#### **Fiscal Information**

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

**A) State budget:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

**B) Local governments:**

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

**Regulatory Impact Table**

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

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

The Executive Director of 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-11-107	42 U.S.C. 664	45 CFR 303.72
Section 62A-1-111		

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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#### R527. Human Services, Recovery Services.

##### R527-450. Federal Tax Refund Intercept.

###### R527-450-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is establish the steps for the interception of a federal tax refund intercept.

###### R527-450-[1]2. Certification[Criteria].

~~(1) The Office of Recovery Services/Child Support Services (ORS/CSS) will refer qualified support debts to the federal Office of Child Support Enforcement (OCSE) for offset by federal tax refund intercept as authorized in pursuant to 45 CFR 303.72 (2003) and 42 U.S.C. [Section] 664.~~

~~(2) Effective October 1, 2007, all IV-A and [N]non-IV-A child support debts will be submitted for federal tax refund offset for past-due support owed to any child, whether or not the child is a minor at the time of certification or offset.~~

~~(3) IV-A and [N]non-IV-A debts [which]that meet certification criteria may be certified and the federal tax refund may be intercepted, even if the obligor is paying on arrearages.~~

###### R527-450-[2]3. Notice of Offset.

~~(1) ORS/[CSS] will send an annual notice to [all]the obligor[s] [certified for the federal tax refund intercept and to all]and potential unobligated spouse[s] at the obligor's last known address that the debts may be certified for[of these] federal tax intercept.[obligors, notifying the obligor of the amount of the arrearage certified, outlining the unobligated spouse's rights, and directing the obligor to contact ORS/CSS if he has questions].~~

~~(2) The annual notice will [advise]notify the obligor and an unobligated spouse of: [his]~~

~~(a) the amount of the arrearage certified;~~

~~(b) the rights of the unobligated spouse;~~

~~(c) the obligor's right to contest the amount of past-due support;~~

~~(d) [and of his]the obligor's right to an administrative review; and~~

~~(e) how the obligor may contact ORS with questions.~~

###### R527-450-[3]4. Earned Income Credit.

~~(1) ORS/[CSS] will refund the portion of the obligor's intercepted federal tax refund that result[ed]s from an earned income credit[.] if the obligor makes a written request and includes a copy of the federal tax return.~~

~~(2) If the intercept payment has been credited to a [N]non-IV-A case and has disbursed to the family, the request will be denied.~~

###### R527-450-[4]5. Distribution of Collections.

~~(1) Any money collected through the tax refund offset process can be applied only to the arrearage certified.~~

~~(2) Collections received through federal tax refund intercept will be applied to satisfy certified IV-A and foster care arrearages before [N]non-IV-A arrearage.~~

~~(3) On [N]non-IV-A cases, the federal tax intercept payments will be held for at least 30 days but not more than 180 days before being disbursed to the obligee.~~

~~(4) [In the event that]If the Department of the Treasury, [Financial Management Service (FMS)]Bureau of the Fiscal Service (BFS) reclaims money [which]that has been refunded to a [N]non-IV-A obligee, that obligee will be required to repay to the state the amount reclaimed by [FMS]BFS.~~

###### R527-450-[5]6. Deleting or Modifying a Federal Tax Certification.

~~(1) If the total amount certified for IV-A and [N]non-IV-A is reduced to zero after the certification, ORS/[CSS] will delete the obligor from the certification list.~~

~~(2) If the obligor's arrearage increases or decreases, ORS/[CSS] will [modify]change the certification amount accordingly.~~

KEY: alimony, child support

Date of Last Change: 2022[October 25, 2007]

Notice of Continuation: May 20, 2019

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 45 CFR 303.72; 42 U.S.C. 664

#### NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R527-920

Filing ID  
54168

#### Agency Information

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nick Buchei	801-741-7520	nabuchei@utah.gov

## NOTICES OF PROPOSED RULES

Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R527-920. Mandatory Disbursement to Obligee Through Electronic Funds Transfer
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Administrative Rulewriting Manual.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is being amended to meet the standards found in the Administrative Rulewriting Manual, pursuant to Executive Order No. 2021-12.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.
<b>B) Local governments:</b>
The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment of this rule is due to Executive Order No. 2021-12, it is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this amendment would create a fiscal cost or savings to persons.

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

There are no compliance costs associated with the amendment of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

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

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

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 62A-11-107	Section 62A-1-111	Section 62A-11-704
45 CFR 302.32		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	01/14/2022

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/29/2021
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**R527. Human Services, Recovery Services.****R527-920. Mandatory Disbursement to Obligor Through Electronic Funds Transfer.****R527-920-1. Authority and Purpose.**

(1) ~~[Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules. Section 62A-11-704 authorizes ORS/CSS to make rules to allow exceptions to mandatory disbursements by electronic funds transfer.]~~ The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to outline the procedures for establishing electronic funds transfers to an obligee[s] and to specify appropriate exceptions to the requirement for ORS[CSS] to make disbursements by electronic funds transfer ~~[as allowed in]~~ pursuant to Section 62A-11-704.

**R527-920-2. Procedures.**

(1) ORS[CSS] will notify an obligee[s] that ~~[have]~~has an enforceable support order[s] of the available options for receiving electronic funds transfers. ~~[Written information about electronic funds transfer options will be sent to the best available addresses for eligible obligees.]~~

(2) Written information about electronic funds transfer options will be sent to the best available address for an eligible obligee.

(3) ~~[Written information about electronic funds transfer options will be sent at the following points in time if an obligee has not already arranged for electronic funds transfers:]~~ In a case where the obligee has not already arranged for an electronic funds transfer, written information about electronic funds transfer options will be sent when one of the following occurs:

~~[—(a) When Section 62A-11-704, mandating disbursement through electronic funds transfers, is implemented by ORS/CSS;]~~

~~[(b)](a) [When] ORS opens a new case [is opened with ORS/CSS that is] accompanied by an enforceable support order; or~~

~~[(e)](b) [When] ORS establishes a first-time support order [is established] for an open case. [with ORS/CSS;]~~

~~[—(d) When an established account for receiving electronic funds transfers is no longer appropriate for future transfers; or;]~~

~~[—(e) When a previously selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.]~~

~~[(3)](4)~~ In a case where the obligee has previously enrolled in the electronic funds transfer service, [W]ritten information about electronic funds transfer options will be [sent to obligees that have previously enrolled in this service] provided in the following situations:

(a) ~~[When] a previously [—] established account for receiving electronic funds transfers is no longer available to the obligee for future transfers; or [—]~~

(b) ~~[When] ORS no longer offers a [previously selected] previously selected method for receiving electronic funds transfers. [will no longer be offered by ORS/CSS.]~~

~~[(4)](5)~~ The obligee may designate their preferred method to receive electronic payments by indicating their preference and returning the form to ORS. Upon receiving the written information about electronic funds transfer options, each obligee will be allowed to select from the available options and return the form to ORS/CSS to indicate his or her preferred method for receiving electronic payments. If an obligee fails to indicate a preference or fails to provide the necessary information to establish the preferred method of electronic funds transfer within sixty days of the date on the written notice, ORS/CSS has the option of enrolling that obligee in a plan to receive payments in an account that may be accessed through the use of an electronic access card.]

## NOTICES OF PROPOSED RULES

(6) If, within 60 days of the date on the written notice, the obligee fails to show a preference of payment or fails to provide the necessary information to establish the preferred method of electronic funds transfer, ORS may enroll the obligee in a plan to receive payments in an account accessible by an electronic access card.

~~(5)(7)~~ (7) Until the electronic funds transfer account is established, payments will be disbursed by paper checks. ~~Payments will be disbursed by paper checks while the method of electronic funds transfer is established.~~

### R527-920-3. Exceptions.

(1) Exceptions to mandatory disbursements through electronic funds transfer are allowed as follows:

(a) ~~[F]~~ for a period of no more than 60 days after a case is opened with an enforceable support order;

(b) ~~[F]~~ for a period of no more than 60 days after a first-time support order is established;

(c) ~~[F]~~ for a period of no more than 60 days while an obligee changes the account to be used for receiving future electronic funds transfers; ~~or,~~

(d) ~~[F]~~ for an indefinite time period if an obligee resides in a foreign country and an electronic funds transfer cannot be facilitated; ~~or~~

(e) for an indefinite period of time if the obligee is not bankable by a financial institution or eligible for any electronic payment program or electronic access card offered by ORS.

(2) The ORS director or ~~[ORS/CSS]deputy~~ ~~[D]~~director may approve additional exceptions to mandatory disbursements through electronic funds transfers on a case-by-case basis if the obligee presents a request in writing and can demonstrate that electronic funds transfers would result in an undue hardship to that obligee. The ORS director or ~~[ORS/CSS]deputy~~ ~~[D]~~director will determine the duration of the exception based on the individual circumstances.

(3) Disbursements through electronic funds transfer will not be mandatory for ORS ~~[CSS]~~ if technical problems prevent successful electronic disbursement within the federally-mandated disbursement time frames found in 45 CFR 302.32.

**KEY:** electronic funds transfer, child support

**Date of Last Change:** 2022~~[June 27, 2008]~~

**Notice of Continuation:** March 23, 2018

**Authorizing, and Implemented or Interpreted Law:** 62A-1-111; 62A-11-107; 62A-11-704; 45 CFR 302.32

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Repeal and Reenact

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-155</b>	<b>Filing ID 54149</b>
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### Agency Information

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration
<b>Room no.:</b>	Suite 2300
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W
<b>City, state and zip:</b>	Taylorville, UT 84129

<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

#### 2. Rule or section catchline:

R590-155. Utah Life and Health Insurance Guaranty Association Summary Document

#### 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 in compliance with Executive Order No. 2021-12. During the review of this rule, the Insurance Department (Department) discovered a significant number of minor issues that needed to be amended and determined that a repeal and replace was the proper method.

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

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, update Section R590-155-5 to use the Department's current language, and remove Section R590-155-4 because penalties are already provided for in statute. The changes do not add, remove, or change any regulations or requirements.

### Fiscal Information

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

##### A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

##### B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

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

**Regulatory Impact Table**

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

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

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

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

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

Section 31A-2-201	Section 31A-28-119	
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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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	11/22/2021
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**R590. Insurance, Administration.**

**R590-155. Utah Life and Health Insurance Guaranty Association Summary Document.**

**[R590-155-1. Authority.**

This rule is promulgated pursuant to:  
 (1) Subsection 31A-2-201(3)(a), in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title; and

## NOTICES OF PROPOSED RULES

~~(2) Subsection 31A-28-119(3), to provide guidelines for the Utah Life and Health Insurance Guaranty Association summary and disclaimer document.~~

### **R590-155-2. Purpose and Scope.**

~~(1) The purpose of this rule is to specify the form and content of the summary and disclaimer document for insurers to disclose to policy or contract holders the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and Health Insurance Guaranty Association as required by Section 31A-28-119.~~

~~(2) The rule shall apply to all insurance transactions in this state involving life and health insurance policies and annuity contracts as specified in Section 31A-28-103.~~

### **R590-155-3. Rule.**

~~(1) An insurer authorized to do business in this state, which is subject to the Utah Life and Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and Health Insurance Guaranty Association.~~

~~(2) For the purpose of this rule, the term "policy or contract holders" shall also mean insureds, subscribers, or certificate holders of group policies.~~

~~(3) Disclosure shall be made in writing using the text in the Notice of Protection Provided by the Utah Life and Health Insurance Guaranty Association, which is available on the department website, <https://insurance.utah.gov>.~~

~~(4) Disclosure shall be given before or at the time of delivery of the policy, contract, or certificate. The summary and disclaimer document shall also be available upon request by a policy or contract holder.~~

~~(5) Each insurer shall file with the commissioner a copy of the summary and disclaimer document.~~

### **R590-155-4. Penalties.**

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

### **R590-155-5. 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.]~~

### **R590-155-1. Authority.**

~~This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-28-119.~~

### **R590-155-2. Purpose and Scope.**

~~(1) The purpose of this rule is to provide guidelines regarding the form and content of the Utah Life and Health Insurance Guaranty Association summary and disclosure document.~~

~~(2) This rule applies to a life insurance policy, a health insurance policy, and an annuity contract.~~

### **R590-155-3. Definitions.**

~~Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Contract holder" means the holder of an annuity contract.~~

### **R590-155-4. Rule.**

~~(1) An insurer shall disclose to a policyholder and to a contract holder that the Utah Life and Health Insurance Guaranty Association may not cover the contractual guarantees in the policy or contract.~~

~~(2) The disclosure required in Subsection (1) shall be:~~

~~(a) in writing;~~

~~(b) given before or at the time a policy, contract, or certificate is delivered;~~

~~(c) available upon request by a policyholder, an enrollee, or a contract holder; and~~

~~(d) filed with the commissioner.~~

~~(3) The disclosure required in Subsection (1) shall use the text in the Utah Life and Health Insurance Guaranty Association's Notice of Protection, which is available on the department's website, <https://insurance.utah.gov>.~~

### **R590-155-5. Severability.**

~~If any provision of this rule, Rule R590-155, 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

**Date of Last Change:** 2022[June 7, 2019]

**Notice of Continuation:** December 8, 2017

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-28-119

## **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R600-2</b>	<b>Filing ID</b> <b>54138</b>
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## **Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Heber M. Wells Bldg	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Hill	801-530-6113	chill@utah.gov

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

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

R600-2. Operations

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

The purpose of this rule change is to delete the reference to a St. George Office. The Labor Commission has closed the St. George Office and is handling filings online.

**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 removes the reference of office hours for an office in St. George, Utah.

**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 since the St. George Office was closed in June 2021.

**B) Local governments:**

There will be no cost or savings to local governments since filings are accepted online.

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

There will be no cost or savings to small businesses since filings are accepted online.

**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 since filings are accepted online.

**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 persons other than small businesses, non-small businesses, state or local government entities since filings are accepted online.

**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 costs for affected person since filings are accepted online.

**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 will be no fiscal impact on businesses since filings are accepted online. 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.)**Regulatory Impact Table**

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

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

The Commissioner of the Labor Commission, Jaceson R. Maughan, 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 34A-1-104

**Public Notice Information**

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

**A) Comments will be accepted until:** 01/15/2022

**10. This rule change MAY become effective on:** 01/22/2022

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**

<b>Agency head or designee, and title:</b>	Jacson R. Maughan, Commissioner	<b>Date:</b>	11/16/2021
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**R600. Labor Commission, Administration.****R600-2. Operations.****R600-2-1. Business Hours.**

A. The offices of the Commission shall be open for receipt of official documents between the hours of 8[:00] a.m. to 5[:00] p.m. Monday through Friday. ~~—The Labor Commission's St. George office shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.~~ Commission offices shall not be open for business Saturday or Sunday and on state-recognized holidays.

B. Notwithstanding the 5[:00] p.m. filing deadline provided in R600-2-1(A) ~~[above]~~, official documents filed with the Labor Commission will be deemed timely if filed electronically, ~~[(either by email or facsimile)]~~, before midnight on the day the document is due.

**KEY: Labor Commission, hours of business**

**Date of Last Change: 2022[September 23, 2013]**

**Notice of Continuation: May 5, 2017**

**Authorizing, and Implemented or Interpreted Law: 34A-1-104**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R612-400-5</b>	<b>Filing ID</b>	<b>54141</b>
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**Agency Information**

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Industrial Accidents
<b>Room no.:</b>	3rd Floor
<b>Building:</b>	Heber M Wells Building

<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ron Dressler	801-530-6841	rdressler@utah.gov
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

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

R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund

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

Workers' compensation insurance premiums in Utah include assessments to fund the Employers' Reinsurance Fund (ERF), the Uninsured Employers' Fund (UEF), the Workplace Safety Account (WSA), and the Industrial Accident's Restricted Account (IARA). These assessment rates are reviewed annually and amended as appropriate to ensure the funds remain viable. The proposed change establishes these assessment rates for the 2022 calendar year.

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

This rule update establishes the following premium rates for 2022: 0.50% for the UEF and 0% for the ERF. The rates for WSA and IARA are 0.25% and 0.50% respectively and are set by statute.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There will be no impact to the cost or savings to the state budget as the premium assessment rates will be the same as last year.



**B) Local governments:**

There will be no impact to the cost or savings to local governments as the premium assessment rates will be the same as last year.

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

There will be no impact to the cost or savings to small businesses as the premium assessment rates will be the same as last year.

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

There will be no impact to the cost or savings to non-small businesses as the premium assessment rates will be the same as last year.

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

There will be no impact to the cost or savings to other persons as the premium assessment rates will be the same as last year.

**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 changes to compliance costs as these premiums are collected and paid each year.

**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 from this rule change as the premium assessment rates are remaining the same as in 2021. 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.)

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

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

The Commissioner of the Labor Commission, Jaceson R. Maughan, had reviewed the regulatory impact analysis and approved it.

**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 59-9-101(2)		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 01/15/2022

**10. This rule change MAY become effective on:** 01/22/2022

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**

<b>Agency head or designee, and title:</b>	Jacson R. Maughan, Commissioner	<b>Date:</b>	11/17/2021
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**R612. Labor Commission, Industrial Accidents.****R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.****R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.**

A. Pursuant to Subsection 59-9-101(2), Sections 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, ~~2021~~2022, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund; and
2. 0.0% for the Employers' Reinsurance Fund.~~;~~

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Subsection 59-9-101(2)(a).

**KEY:** workers' compensation, insurance, rates, waivers

**Date of Last Change:** ~~2021~~January 1, 2021

**Notice of Continuation:** February 8, 2018

**Authorizing, and Implemented or Interpreted Law:** 59-9-101(2)

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R671-301</b>	<b>Filing ID</b>	<b>53946</b>
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**Agency Information**

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E. Winchester Street, Suite 300	
<b>City, state and zip:</b>	Murray, UT 84107	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R671-301. Personal Appearance
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Rule R671-301 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that the text of this rule could be both simplified and clarified. In

addition, based on review by the Board's Assistant Attorney General, some statutory citations require update.

**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 amend Rule R671-301 to indicate that an offender has a right to be present for a hearing if housed in the state. Previously, the rule itemized various types of hearings. The amendment simplifies the text to reflect that the offender has a right to be present for all hearing types if housed in Utah. The amendment further clarifies that the offender may ask questions of the hearing official during a personal appearance hearing. It adopts current practice by delineating specifically to whom the offender may ask questions. The offender may only ask questions of the hearing official. Minor adjustments are included in the amendment by substituting the word "request" for the word "seek," and appropriately broadening who the Board can request a courtesy hearing by changing "custodial state" to "custodial jurisdiction." The amendment also updates a statutory reference from Subsection 63G-3-201(3) to both Subsection 63G-3-201(2) and Subsection 63G-3-201(3). It also updates a statutory reference from Subsection 77-27-9(4)(a) to Subsection 77-27-9(5).

**Fiscal Information**

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

**A) State budget:**

The changes to this rule will not result in either increased costs or cost savings in the state budget. There is no change to current Board processes. Rather, this rule clarifies that an offender is only allowed to ask questions of the hearing official. Other changes are stylistic. Because there is no change to current processes, there will not be additional costs associated with this proposed rule amendment.

**B) Local governments:**

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. These amendments do not financially impact victims of crime.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. These amendments do not financially impact victims of crime.

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

No other persons will be financially impacted by the changes proposed in the amendments to this rule as it does not regulate any other individuals or groups.

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

Amendments to this rule do not impact compliance in any way. There will be no compliance costs for those working directly with the Board.

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

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)**Regulatory Impact Table**

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

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

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

The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, 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:**

Subsections 63G-3-201(2) and (3)	Subsection 77-27-7(2)	Subsection 77-27-9(5)
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**Public Notice Information****9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/15/2021
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**R671. Pardons (Board of), Administration.****R671-301. Personal Appearance.****R671-301-1. Personal Appearance.**

[A-](1) By statute, the Board or its designee is required to convene at least one public hearing for ~~at~~ each offender[s] except those serving life without parole or a death sentence. In rehearings, the offender is afforded ~~all the~~ rights and considerations afforded in

## NOTICES OF PROPOSED RULES

the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

[B-](2) An offender has the right to be present [at a parole grant, rehearing, or parole violation hearing] if the offender is housed in the state ([UCA]Section 77-27-7). The offender may speak, present documents, ask questions of the hearing official, and answer questions. In the event an offender waives this right to appear, or refuses to personally attend the hearing, the Board may proceed with the hearing and issue a decision.

[C-](3) If an offender is housed out of state: [~~the Board may proceed as follows:~~]

[1-](a) The offender may waive the right to be present, and the Board may then conduct the hearing in absentia.

[2-](b) The Board may request the Department of Corrections to return the offender to the state for the hearing.

[3-](c) The Board may [seek]request that a courtesy hearing be conducted by the appropriate paroling authority of the custodial jurisdiction[state]. A request along with a complete copy of Utah's record shall be forwarded for the hearing. [All-]Reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

[4-](d) An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

[5-](e) A hearing may be conducted by videoconference or conference telephone call.

**KEY:** inmates, parole

**Date of Last Change:** 2022[October 4, 2012]

**Notice of Continuation:** January 30, 2017

**Authorizing, and Implemented or Interpreted Law:** 63G-3-201(2) and (3); 77-27-7(2); 77-27-9([4]5)(a)

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R671-303</b>	<b>Filing ID</b> <b>53947</b>
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### Agency Information

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E. Winchester Street, Suite 300	
<b>City, state and zip:</b>	Murray, UT 84107	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R671-303. Information Received, Maintained or Used by the Board

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

Rule R671-303 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that sections of this rule required clarification and some modification. In addition, based on review by the Board of Pardons and Parole's (Board) Assistant Attorney General, some statutory citations require update.

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

The amendments to Rule R671-303 are primarily to simply and clarify the processes outlined in this rule. One adjustment eliminates the 14 day time requirement for an offender to submit additional information for consideration by the Board. Adjustment also makes it clear that the Board will receive information provided by the Department of Corrections. The amendment addresses issues related to photographs submitted for consideration by the Board. It makes clear that photographs will only be received in extraordinary situations. Where photographs are received by the Board, the offender will be allowed to view them during a hearing, but the offender will not be allowed retain copies of the photographs. The Board is also permitted to strike from the offender's record and refuse to accept any material it considers inflammatory. Finally, the amendment also updates statutory references by eliminating the incomplete reference to Chapter 63G-2 and adds a reference to Subsection 77-27-7(6).

### Fiscal Information

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

##### A) State budget:

The amended language only clarifies and makes small adjustments to a Board disclosure process. The changes do not materially adjust the way the Board currently operates. Therefore, the changes to this rule will not result in either increased costs or cost savings in the state budget.

##### B) Local governments:

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved with the Board unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not change any processes or interactions between the Board and victims of crime. Therefore, there will be no financial impact on small businesses.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not change any processes or interactions between the Board and victims of crime. Therefore, there will be no financial impact on non-small businesses.

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

The amended language makes minor adjustments to a Board disclosure process related to offenders. These changes do not materially adjust the way the Board currently operations. Therefore, the changes to this rule will not result in a financial impact on other persons or entities.

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

Amendments to this rule do not impact compliance for offenders in any way. They will be helpful to offenders in their understanding of disclosure processes. There will be no compliance costs for those working directly with the Board due to changes within 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):

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

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

The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, 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 77-27-7(6)		
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**Public Notice Information****9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	01/14/2022
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**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**

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/15/2021
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**R671. Pardons (Board of), Administration.****R671-303. Information Received, Maintained or Used by the Board.****R671-303-1. Information Received, Maintained or Used by the Board.**

(1) Offender [A]access to [F]information

(a) Absent a security or safety concern, as determined by the Board, ~~the Board will provide the~~ [an] offender ~~[will be provided]~~ access to information ~~the Board will consider~~ [being considered by the Board] and given an opportunity to respond to such information, whenever the Board sets or extends the offender's parole or release date. ~~[If]~~ The Board ~~will provide the offender a written summary of information being considered if~~ [determines offender] access to information presents a security or safety concern, ~~the offender will be provided a written summary of the material information being considered~~.

(b) The Board, upon request or upon its own motion, may:

(i) continue a hearing; or

(ii) ~~[to]~~ allow the offender to submit ~~[submission of]~~ additional documentation or information ~~[The Board will consider]~~ for consideration pursuant to the Board's order ~~[any relevant facts obtained at the hearing or later submitted by the offender, provided such later submitted information is received within fourteen (14) days following the hearing]~~.

(c) The Board shall:

(i) ~~[will]~~ provide an offender with a copy of the records not provided for previous hearings and contained in the offender's ~~[file]~~ record at least three days prior to any personal appearance hearing in which a parole or release date may be fixed or extended by the Board;

(ii) ~~at the beginning of the hearing, provide~~ [A] any additional information ~~not provided under Subsection (1)(c)(i) obtained by the Board after this initial disclosure~~ [will be provided to the offender at the beginning of the hearing];

(iii) allow ~~[In such event,]~~ the offender ~~[will be given]~~ an opportunity to review the supplemental information before ~~the hearing proceeds~~ [ing] in circumstances described under Subsection (1)(c)(ii); and

(iv) proceed with the hearing as scheduled ~~[If]~~ the offender requests no additional time ~~for review as described under Subsection (1)(c)(iii)]~~ is requested by the offender, the hearing will proceed as scheduled.

(d) ~~For administrative routings to fix an original hearing date, the Board will only consider information available to the court at the time of sentencing. This information will be disclosed to the offender at the time of an original hearing.]~~

(2) Submission of [F]information

(a) Other than ~~[concise and brief letters, or]~~ statements by the offender ~~or information the Department of Corrections (Department) submits,~~ ~~all~~ other materials, briefs or written memoranda or argument submitted by or on behalf of any person, in preparation for a hearing, ~~[excluding commutation hearings governed by Rule R671-312(9)],~~ shall be limited to no more than five ~~[(5)]~~ pages in length.

(b) In extraordinary circumstances, [P]photographs or electronic images may be submitted [but should] and must be

relevant to the offense. The Department ~~[of Corrections]~~ limits the number of photographs or electronic images that an inmate may possess and photographs or electronic images of victims are contraband. ~~[Therefore,]~~ The Board will disclose accepted photographs or electronic images at the beginning of a hearing. The offender may view the photographs or electronic images but not retain them. ~~[As noted in section (1)]~~ Pursuant to Subsection R671-303-1(1)(b), the offender may request additional time to respond or submit supplemental information.

(c) Submissions by legal counsel for or on behalf of an offender must be received by the Board no later than seven ~~[(7)]~~ days prior to any scheduled hearing.

(d) The Board reserves the right to strike from the offender's ~~[file]~~ record, and to refuse to accept or consider any material or submissions ~~[which]~~ that are irrelevant, defamatory, inflammatory, or ~~[which]~~ that do not otherwise conform to this rule.

**KEY: inmates' rights, inmates, parole, records**Date of Last Change: 2022 ~~April 7, 2015~~

Notice of Continuation: January 30, 2017

Authorizing, and Implemented or Interpreted Law: [63G-2]77-27-7(6)**NOTICE OF PROPOSED RULE**

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R671-304

Filing ID  
53948**Agency Information**

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E. Winchester Street, Suite 300	
<b>City, state and zip:</b>	Murray, UT 84107	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

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

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

R671-304. Hearing Record

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

Rule R671-304 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that the text of this rule could be both simplified and clarified. In addition, based on review by the Board's Assistant Attorney General, some statutory citations require update.

**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 amend Rule R671-304 to clarify that anyone requesting a recording of a Board hearing may submit an affidavit indicating they are unable to pay a fee associated with generating a copy of the recording. It makes charging a fee for a requested recording permissive rather than a requirement by changing a "shall" to "may." The amendment also updates a statutory reference from Subsection 77-27-9(4)(a) to Subsection 77-27-9(5).

#### Fiscal Information

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

**A) State budget:**

The changes to this rule will not result in either increased costs or cost savings in the state budget. The change allows the Board to not charge a fee for a hearing recording requested by an individual. However, so few requests are made that require copying the hearing to physical digital media, that this minor adjustment will not create savings or additional costs for the Board.

**B) Local governments:**

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved with the Board unless they are considered a victim of a crime related to the offender. At most, there could be less of a financial burden on a victim because the changes no longer require the Board to charge a fee for hearing reproduction.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. At most, there could be less of a financial burden on a victim because the changes no longer require the Board to charge a fee for hearing reproduction.

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

No other persons will be financially impacted by the changes proposed in the amendments to this rule. At most, there could be less of a financial burden on other persons or entities because the changes no longer require the Board to charge a fee for hearing reproduction.

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

The rule itself does require a request for the hearing reproduction fee waiver, due to an inability to pay, to be affirmed by an affidavit. However, this requirement is not adjusted or modified by the amendments.

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

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)

**Regulatory Impact Table**

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

## NOTICES OF PROPOSED RULES

<b>Net Benefits</b>	<b>Fiscal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>				
The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, has reviewed and approved this fiscal analysis.				

## Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Subsection 63G-3-201(3)	Section 77-27-1 et seq.	Section 77-27-8
Subsection 77-27-9(5)		

## Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	01/14/2022

<b>10. This rule change MAY become effective on:</b>	01/21/2022
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

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/23/2021
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## R671. Pardons (Board of), Administration.

## R671-304. Hearing Record.

## R671-304-1. Hearing Record.

~~(a)~~(1) An electronic audio record shall be made of ~~each~~all in[-]person, video, or telephonic hearings held by the Board of Pardons and Parole (Board).

~~(b)~~(2) Pursuant to ~~Utah Code Ann.~~Section 77-27-8, a certified shorthand reporter shall record and transcribe the proceedings of any death penalty commutation hearing held by the Board.

~~(c)~~(3) The electronic record made pursuant to this ~~R~~Rrule shall be maintained by the Board for ~~7~~seven years.

~~(d)~~(4) Any magnetic, analog, or other non-digital hearing record made prior to January 1, 2009 shall ~~only~~only be maintained for ten years from the date of the hearing.

~~(5) An offender or any member of the public may~~Upon written request a copy of the recording in writing ~~may be provided to an offender or any member of the public~~.

(a) If the request for the recording requires that the record be copied to an electronic or digital medium, the Board ~~shall~~may charge a fee, approved by the Legislature, for the copy.

(b) When ~~an offender~~requestors affirm[s] by affidavit that ~~he or she is~~they are unable to pay for a copy of the recording, the Board may furnish a copy of the record, at no fee, to the ~~offender~~requestor.

## KEY: government hearings

Date of Last Change: 2022~~January 8, 2018~~

Notice of Continuation: January 30, 2017

Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-8; 77-27-9~~(4)(a)~~(5)

## NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R671-305

Filing ID 53949

## Agency Information

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E. Winchester Street, Suite 300	
<b>City, state and zip:</b>	Murray, UT 84107	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

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

## General Information

## 2. Rule or section catchline:

R671-305. Board Decisions and Orders

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

Rule R671-305 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that additional types of decisions made by the Board of Pardons and Parole (Board) should be incorporated into this rule. In addition, based on review by the Board's Assistant Attorney General, some statutory citations require update.

## 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 amend Rule R671-305 to incorporate redetermination decisions and compassionate release decisions to the types of decisions where the Board will provide a brief rationale for the decision. The amendment also updates a statutory reference from Subsection 63G-3-201(3) to Section 63G-3-201. It also updates a statutory reference from Subsection 77-27-9(4)(a) to Subsection 77-27-9(5). Finally, the amendment eliminates the statutory reference to Subsection 77-27-10.

### Fiscal Information

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

##### A) State budget:

The changes to this rule will not result in either increased costs or cost savings in the state budget. These are decisions the Board of Pardons and Parole currently conducts and provides a rationale for their decision. Because there is no change to current processes, there will not be additional costs associated with this proposed rule amendment.

##### B) Local governments:

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. These amendments do not financially impact victims of crime.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. These amendments do not financially impact victims of crime.

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

No other persons will be financially impacted by the changes proposed in the amendments to this rule as it does not regulate any other individuals or groups.

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

Amendments to this rule do not impact compliance in any way. There will be no compliance costs for those working directly with the Board.

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

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)

##### Regulatory Impact Table

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

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

The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, 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-3-201	Subsection 77-27-9(5)	
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	01/14/2022
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<b>10. This rule change MAY become effective on:</b>	01/21/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/24/2021
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**R671. Pardons (Board of), Administration.**

**R671-305. Board Decisions and Orders.**

**R671-305-1. Board Decisions and Orders.**

The Board will reduce ~~[D]~~ decisions ~~[of the Board will be reduced]~~ to a written order. Orders entered following original hearings, re-hearings, special attention hearings, parole violation hearings, evidentiary hearings, rescission hearings, redetermination decisions, and compassionate release decisions ~~[and rescission hearings]~~ will ~~[be accompanied by]~~ contain a brief rationale for the order. The Board's written orders and rationale statements are public documents. The Board shall provide or mail a ~~[A]~~ copy of the order, and rationale statement if entered, ~~[shall be provided or mailed]~~ to the person who is the subject of the order. The Board shall maintain a copy of ~~[all]~~ orders entered in each case. The Board may publish its orders on its website at its discretion and convenience.

**KEY: government hearings**

**Date of Last Change: 2022** ~~[April 7, 2015]~~

**Notice of Continuation: January 30, 2017**

**Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 63G-3-201** ~~[(3)]; 77-27-9~~ ~~[(4)(a)]~~ ~~[(5)]; 77-27-10]~~

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R671-310</b>	<b>Filing ID</b> <b>53950</b>
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**Agency Information**

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E. Winchester Street, Suite 300	
<b>City, state and zip:</b>	Murray, UT 84107	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R671-310. Rescission Hearings

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

Rule R671-310 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that sections of this rule required clarification and some modification.

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

The amendments to Rule R671-310 are primarily to simply and clarify the processes outlined in this rule. Rather than specifically referring to offender notification regarding allegations, the adjustment simply indicates the Board of Pardons and Parole (Board) will notify the offender of the basis for considering a rescission which would include allegations and possibly other information. The amendments also clarify rescission processes in the event of an inmate escape. The Board is allowed to continue a hearing when waiting for resolution of criminal or administrative proceedings. Finally, this rule allows the Board to make an interim rescission decision upon receiving a rescission request prior to a rescission hearing.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amended language makes small adjustments to the Board's rescission process. The changes do not materially adjust the way the Board currently operates. Therefore, the changes to this rule will not result in either increased costs or cost savings in the state budget.

**B) Local governments:**

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved with the Board unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not directly involve victims of crime. Therefore, there will be no financial impact on small businesses.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not directly involve victims of crime. Therefore, there will be no financial impact on non-small businesses.

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

The amended language makes minor adjustments to the Board's rescission process related to offenders. These changes do not materially adjust the way the Board currently operations. Therefore, the changes to this rule will not result in a financial impact on other persons or entities.

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

Amendments to this rule do not impact compliance issues in any way. There will be no compliance costs for those working directly with the Board due to changes within 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):

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)**Regulatory Impact Table**

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

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

The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, 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 77-27-5	Section 77-27-6	Section 77-27-11
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**Public Notice Information**

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

**A) Comments will be accepted until:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/24/2021
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**R671. Pardons (Board of), Administration.****R671-310. Rescission Hearings.****R671-310-1. Rescission Hearings.**

(1) Any ~~[prior]~~ Board decision may be reviewed and rescinded by the Board at any time ~~[until an]~~ prior to an offender's actual release from custody.

(2) If the rescission of a release or rehearing date is being requested by an outside party: ~~[;]~~

(a) information shall be provided to the Board establishing the basis for the request ~~[;]~~ and

(b) ~~[U]~~ upon receipt of such information, the Board may schedule the offender ~~[may be scheduled]~~ for a rescission hearing.

(3) The Board may ~~[also]~~ review and rescind an offender's release or rehearing date on its own initiative.

(a) Except under extraordinary circumstances, the offender should be notified of ~~[all allegations]~~ the basis for consideration of rescission and the date of the scheduled hearing at least seven calendar days in advance of the hearing.

(b) The offender may waive this period.

(4) In the event of an escape, the Board will rescind the inmate's date upon ~~[official]~~ notification of escape from custody and continue the hearing until the inmate is available for appearance. ~~[;]~~ The hearing may be continued pending criminal or administrative proceedings ~~[charges have been]~~ being resolved ~~[and]~~ or until the Board receives appropriate information regarding the escape ~~[has been provided]~~.

(5) The Board may make an interim rescission decision upon receipt of a rescission request and prior to a rescission hearing. ~~[The hearing officer will conduct the hearing and make an interim decision to be reviewed, along with a summary report of the hearing, by the Board members.]~~

**KEY:** parole, inmate

**Date of Last Change:** 2022 ~~February 18, 1998~~

**Notice of Continuation:** January 30, 2017

**Authorizing, and Implemented or Interpreted Law:** 77-27-5; 77-27-6; 77-27-11

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R671-316</b>	<b>Filing ID</b>	<b>53951</b>
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**Agency Information**

<b>1. Department:</b>	Pardons (Board of)		
<b>Agency:</b>	Administration		
<b>Street address:</b>	448 E. Winchester Street, Suite 300		
<b>City, state and zip:</b>	Murray, UT 84107		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Mike Haddon	801-261-6467	mikehaddon@utah.gov	

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

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

R671-316. Redetermination

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

Rule R671-316 was set for review by 01/30/2022. The contents of this rule were reviewed due to the approaching review date. Upon review, it was determined that sections of this rule required clarification and some modification. In addition, based on review by the Board's Assistant Attorney General, some statutory citations require update.

**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 amend Rule R671-316 in three primary ways. First, the amended language allows an offender's legal representative to request a redetermination review. Second, the amendment removes specific language indicating the Board must find significant and material changes in circumstances that were not previously considered to meet redetermination review requirements. This requirement is made more general, allowing the Board to consider redetermination review simply if they find cause to review the previous decision. Third, the amendment requires the Board, once it has reached a decision, to include a brief statement or rationale for the decision. Previously, this was only required if the Board denied the redetermination review request. Finally, the

amendment also updates a statutory reference to include Subsection 63G-3-201(2) in addition to a reference to Subsection 63G-3-201(3).

#### Fiscal Information

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

###### A) State budget:

The amended language makes small adjustments to a single Board process. These changes do not materially adjust the way the Board currently operations. Therefore, the changes to this rule will not result in either increased costs or cost savings in the state budget.

###### B) Local governments:

The changes to this rule will not result in either increased costs or cost savings to local governments. There is nothing in the amendments that change the current working relationship between the Board and any local governmental entities. Therefore, there will be no fiscal impact on local governments.

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

Small businesses would not be involved with the Board unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not change any processes or interactions between the Board and victims of crime. Therefore, there will be no financial impact on small businesses.

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

Non-small businesses would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. This rule and the proposed changes do not change any processes or interactions between the Board and victims of crime. Therefore, there will be no financial impact on non-small businesses.

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

The amended language makes small adjustments to a single Board process. These changes do not materially adjust the way the Board currently operations. Therefore, the changes to this rule will not result in a financial impact on other persons or entities.

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

Amendments to this rule do not impact compliance for affected persons in any way. There will be no compliance costs for those working directly with the Board with the proposed changes to this rule.

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

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, 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.)

###### Regulatory Impact Table

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

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

The Chair of the Utah Board of Pardons and Parole, Carrie Cochran, 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:**

Subsections 63G-3-201(2) and (3)	Section 77-27-5	Section 77-27-9
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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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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

<b>Agency head or designee, and title:</b>	Mike Haddon, Director of Administrative Services	<b>Date:</b>	11/15/2021
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## R671. Pardons (Board of), Administration.

## R671-316. Redetermination.

## R671-316-1. Redetermination Review.

(1) Redetermination is a process whereby the Department of Corrections (Department), a legal representative of the offender, or ~~an~~ the offender may request that the Board review new, material, and significant information, or reconsider a prior decision.

(2) Redetermination of a previous decision may be considered if:

- (a) the time requirements of this rule are met;
- (b) the offender has no new criminal convictions since the entry of the decision for which redetermination is sought;
- (c) the offender has no pending major disciplinary violations; and
- (d) the Board ~~[finds that a significant and material change in circumstances has occurred which it has not previously considered]~~ finds cause to review the previous decision.

(3) The Department, a legal representative of the offender, or ~~an~~ the offender may submit a redetermination request, asking the Board to reconsider a prior decision, if:

- (a) the decision ordered the expiration of a life sentence, and at least ten years have passed since the Board's decision or any subsequent redetermination decision;
- (b) the decision ordered a release, rehearing, or expiration of any sentence not involving the expiration of a life sentence, and at least five years have passed since the Board's decision or any subsequent redetermination decision; or

(c)(i) the decision set an original hearing for a homicide offense, pursuant to ~~[Utah R. Admin. P.]~~ Subsection R671-201-1(3)(a);

(ii) the original hearing was set more than ~~[fifteen]~~ 15 years following the offender's arrival at the prison; and

(iii) at least ten years have passed since the administrative review decision or any subsequent redetermination decision.

(4) A redetermination request shall:

(a) clearly and specifically state the reasons supporting the redetermination request;

(b) include a current report detailing the offender's case action plan compliance, treatment participation and history, disciplinary history, and current risk assessment; and

(c) be signed by the offender if not submitted by the Department.

(5) If the request for redetermination is not submitted by the Department, the Board may request that the Department review the request, provide any updated institutional, medical, or other report requested by the Board, and make a recommendation regarding the request.

(6) The Board may make a decision regarding a redetermination request with or without a hearing.

(7) ~~[If the Board denies]~~ When the Board reaches a redetermination ~~[request]~~ decision, ~~[the]~~ that decision shall be accompanied by a brief statement or rationale for that decision ~~[giving the reason for the denial]~~.

**KEY:** parole, inmates

**Date of Last Change:** ~~2022~~ October 15, 2015

**Notice of Continuation:** January 30, 2017

**Authorizing, and Implemented or Interpreted Law:** Art. VII, Sec. 12; 63G-3-201 (2) and (3); 77-27-5; 77-27-9

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R907-63-2</b>	<b>Filing ID</b>	<b>54161</b>
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## Agency Information

1. Department:	Transportation	
Agency:	Administration	
Room no.:	Administrative Suite, 1st floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov

Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R907-63-2. Procedure to Collect for Damage to Structures and Highways
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The Legislature amended Section 72-7-301 when it passed S.B. 113 during the 2021 General Session. The amendment added text that allows the Department of Transportation (Department) to collect from a person who by any means willfully or negligently injures or damages any highway, highway equipment, or highway sign: The full cost to repair the damaged property or replace the damaged property with a replacement that is functionally equivalent to the property that was damaged. The amendment also added a Subsection 72-7-301(5)(b), which states: "Except for the replacement of a damaged motor vehicle, the costs described in Subsection (5)(a) may not be reduced based on the depreciated value of the damaged property at the time the damage occurs." The proposed changes to Section R907-63-2 reflect the Legislature's changes to Section 72-7-301.
Additionally, the proposed change also allows the Department to wait for 120-days rather than the current 60-days before sending an account to the office of State Debt Collection. The Department has an exemption from the Division of Finance that allows it additional time to collect on these accounts.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The proposed changes will allow the Department to collect from a person who damages any highway, highway equipment, or highway sign the total cost to repair the damaged property or replace the damaged property with a functionally equivalent to the damaged property. However, the proposed change does not allow the person responsible for causing the damage to reduce the amount by claiming depreciation of the damaged property.
The proposed changes also allow the Department to attempt to collect the amount owed for 120-days rather

than 60-days before transferring the matter to the office of State Debt Collection.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department does not anticipate the proposed changes will affect the state's budget appreciably. The changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose.
<b>B) Local governments:</b>
The Department does not anticipate the proposed changes will affect local governments because this rule does not apply to them.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
The Department does not anticipate the proposed changes will generally affect small businesses' because the changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
The Department does not anticipate the proposed changes will generally affect non-small businesses' because the changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
The Department does not anticipate the proposed changes will generally impact persons other than small businesses, non-small businesses, state, or local government entities because the changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
The proposed changes will not cost impacted persons anything because the changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>

The proposed changes will not have a fiscal impact on businesses because the changes reflect the amendments the Legislature made to Section 72-7-301 that clarify that section's purpose. 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**

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

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

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, 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 72-7-301

**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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	11/23/2021
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**R907. Transportation, Administration.**

**R907-63. Structure Repair and Loss Recovery Procedure.**

**R907-63-2. Procedure to Collect for Damage to Structures and Highways.**

(1) Upon notification of damage to the Department's property, the Department ~~shall~~ will repair or replace damaged state structures and highway elements.

(2) After the Department repairs or replaces damaged structures and highway elements under Subsection (1), the Department will invoice the owner of the vehicle or object causing the damage the total costs of repairing or replacing the damaged property.

(a) If the person directly responsible for causing the damage does not own the vehicle or object causing the damage, the Department will invoice the person responsible for causing the damage the total costs of repairing or replacing the damaged property as well as the owner.

(b) The owner and operator are jointly and severally liable under Subsection (2) for any damage caused to highway structures and elements by the operation or movement of the vehicle or object.

(3) If a vehicle damages a state structure or highway element, the owner of the vehicle or object causing the damage or the person directly responsible for causing the damage must reimburse the Department for the total cost of repairing the damage. Except for replacing a damaged motor vehicle, the costs described in Subsection (2) may not be reduced based on the depreciated value of the damaged property when the damage occurs.

(4) If the Department does not receive a total amount invoiced in Subsection (2) within 120 days of the date of the invoice, the Department may pursue reimbursement by one of the following means:

(a) The Department may pursue collection of a delinquent account under Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.

(b) The Department may tender the account to a collection agency for immediate collection.



~~(5) In cases where the full payment of an invoice will cause undue financial pressure, the owner of the vehicle or person responsible for the damage may arrange to make installment payments on the debt.~~

~~(2) All costs associated with the repair or replacement of the damaged property shall then be invoiced to the owner of the vehicle causing the damage, or to the person directly responsible for the damage.~~

~~(3) If the damage is caused by a vehicle, the person responsible shall reimburse the Department for the full cost of repairing the damage.~~

~~(4) If payment is not received by the Department within 60 days of the date of the invoice, the Department may pursue payment by one of the following means:~~

~~(a) UDOT may pursue collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.~~

~~(b) The account may be tendered to a collection agency for immediate collection.~~

~~(5) In cases where undue financial pressure would be caused by full payment of an invoice, the owner of the vehicle or person responsible for the damage may arrange to make installment payments on the debt.]~~

**KEY:** bridges, damages, loss recovery, structures

Date of Last Change: ~~2022~~~~August 23, 2016~~

Notice of Continuation: December 20, 2019

Authorizing, and Implemented or Interpreted Law: 72-7-301; 63A-3-301 through 63A-3-310

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R940-3</b>	<b>Filing ID</b> <b>54160</b>
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#### Agency Information

<b>1. Department:</b>	Transportation Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Administrative Suite, 1st floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

#### General Information

##### 2. Rule or section catchline:

R940-3. State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance

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

The proposed changes will conform this rule to H.B.151, which passed in the 2021 General Session which added a new project type, "publicly owned infrastructure project," to the eligibility list.

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

H.B. 151's definition of a public-owned infrastructure project "means a project to improve water or sewer infrastructure that is owned by a public entity." The bill became law on 05/05/2021. The proposed rule update will provide future flexibility by referencing the code section so that as the Legislature modifies eligible project types, this rule will automatically conform to the changes.

#### Fiscal Information

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

###### A) State budget:

The proposed changes alter the definition of "project" included in this rule to allow public entities to apply for loans from the State Infrastructure Bank (SIB) to construct water or sewer infrastructure projects. The SIB generates money for loans and assistance from numerous sources, including federal grants and interest, and income generated by the fund. Since SIB funds do not come from the state's budget, an increase in the amount of assistance and loans from the SIB the commission can approve will not impact the state's budget.

###### B) Local governments:

The proposed changes alter the definition of "project" included in this rule to allow public entities to apply for loans from the SIB to construct water or sewer infrastructure projects. A local government must apply for a loan or assistance from the SIB to be affected by the

## NOTICES OF PROPOSED RULES

proposed changes so the changes will not cause a fiscal impact on local governments.

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

The proposed changes will not have a fiscal impact on small businesses because this rule only applies to the Transportation Commission and public entities.

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

The proposed changes will not have a fiscal impact on non-small businesses because this rule only applies to the Transportation Commission and public entities.

**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 changes will not have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because this rule only applies to the Transportation Commission and public entities.

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

These changes will not affect any person, only public entities, which are not 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):

This proposed rule change 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

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

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

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, 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 72-2-202	Section 72-2-203	
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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:** 01/14/2022

**10. This rule change MAY become effective on:** 01/21/2022

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

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	11/23/2021
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**R940. Transportation Commission, Administration.****R940-3. State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance.****R940-3-1. Authority and Purpose.**

(1) Authority to make this rule is by ~~[Utah Code Subsection]~~ Sections 72-2-202 and 72-2-203~~(2)~~.

(2) The purpose of this rule is to establish procedures, standards, and a prioritization process the commission will follow to approve infrastructure loans and infrastructure assistance through the State Infrastructure Bank Fund created by Subsection 72-2-202(1) ("SIB").

**R940-3-2. Definitions.**

(1) The definitions stated in Section 72-2-201 define the same words as used in this rule.

(2) In addition:

(a) "Commission" means Transportation Commission created by Section 72-1-301.

(b) "Department" means Department of Transportation created by Section 72-1-201.

(c) "Public entity" means as the phrase is defined by Section 72-2-201. A public entity is eligible to receive an infrastructure loan or assistance funded by the SIB.

~~[(d) "Transportation project" means as the phrase is defined by Section 72-2-201. A transportation project is eligible for funding by an infrastructure loan or assistance from the SIB.](d) "Project" means the same as Section 72-2-201 defines transportation project. A project is eligible for funding by an infrastructure loan or assistance from the SIB.~~

**R940-3-3. Procedures and Standards for an Infrastructure Loan or Assistance from the SIB.**

(1) Procedures.

(a) A public entity must request an infrastructure loan or infrastructure assistance using an application form provided by the department.

(b) The public entity must complete and submit the application completed according to the application instructions.

(c) The public entity must state clearly if it is applying for a loan or assistance as defined by Subsection[s] 72-2-201(3) or 72-2-201(2), respectively.

(d) The application form with instructions is available on the department's website at [udot.utah.gov/go/SIB](http://udot.utah.gov/go/SIB).

(2) Standards.

(a) A loan from the SIB fund must bear interest at or above the market interest rate available to the state.

(b) ~~The commission will determine the~~ interest rate for an infrastructure loan ~~[will be determined]~~ by adding 0.5% to the rate for AAA Municipal General Obligation Bonds obtained from the state treasurer as of the date of the completed application.

(c) The public entity must begin repaying the infrastructure loan no later than the completion date of the project or the date the public entity opens the facility to traffic in the case of a highway project. Interest will accrue during the period between loan closing and the agreed upon estimated project completion date~~[;]~~ and will be capitalized and added to the loan's principal balance~~[of the loan]~~.

(d) The repayment period for an infrastructure loan may not exceed the term identified in Title 72, Chapter 2, Part 2, State Infrastructure Bank Fund.

(e) Loan documents must ~~[indicate]~~ state the execution date and repayment deadline date for the loan.

(f) The public entity may pledge ~~[all or a portion]~~ any of a revenue source controlled by the public entity to repay~~[the repayment of]~~ the loan.

(g) The public entity must repay loans in monthly, quarterly, or yearly installments.

(h) If the applicant does not fully execute the assistance or loan ~~[is not fully executed]~~ within 180 days of the date the ~~[application is approved by the commission]~~ commission approves the application, the application will expire unless the ~~[public entity]~~ applicant requests~~[;]~~ and the commission approves a continuation of the terms. Continuations ~~[will be]~~ are limited to a maximum of 180 days each.

**R940-3-4. Prioritizing Requests for an Infrastructure Loan[s] or Infrastructure Assistance.**

(1) Criteria. The commission will follow a prioritization framework that may include the following criteria to evaluate and prioritize requests for a loan or assistance:

(a) Availability of money in the fund;

(b) evidence the project will encourage, enhance, or create economic benefits to the state or political subdivision;

(c) the likelihood a loan or assistance will enable the project to proceed at an earlier date than would otherwise be possible;

(d) the extent to which assistance will foster innovative public-private partnerships and attract private investment;

(e) the project demonstrates that it provides a benefit to the state highway system, including safety or mobility improvements;

(f) the ~~[amount of]~~ proposed assistance amount as a percentage of the overall project costs with an emphasis on local and private participation;

(g) the extent to which the project provides intermodal connectivity with public transportation, pedestrian, or nonmotorized transportation facilities; or

(h) other provisions the commission considers appropriate.

(2) Scoring. The commission will apply a framework to determine the score it assigns to qualified projects for prioritization purposes. This framework is located on the department's website~~[at this address]~~: [udot.utah.gov/go/SIB](http://udot.utah.gov/go/SIB) and is incorporated by reference.

**R940-3-5. Commission Discretion.**

The commission may approve a request for a loan or assistance ahead of another request with a higher prioritization score for good cause, as determined by the commission during a public meeting.

**KEY:** State Infrastructure Bank Fund, SIB loan, SIB assistance, SIB

**Date of Last Change:** ~~2022[July 23, 2020]~~

**Notice of Continuation:** December 14, 2018

**Authorizing, and Implemented or Interpreted Law:** 72-2-203

**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

Utah Admin. Code Ref (R no.):	R614-1-4	Filing ID: 54150
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#### Agency Information

1. Department:	Labor Commission	
Agency:	Occupational Safety and Health	
Room no.:	3rd Floor	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146650	
City, state and zip:	Salt Lake City, UT 84114-6650	
Contact person(s):		
Name:	Phone:	Email:
Cameron Ruppe	801-530-6898	cruppe@utah.gov
Chris Hill	801-530-6800	chill@utah.gov

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

#### General Information

##### 2. Rule or section catchline:

R614-1-4. Incorporation of Federal Standards

##### 3. Effective Date:

11/22/2021

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

The purpose of this emergency rule is to protect healthcare employees by adopting Occupational Safety and Health Administration's (OSHA) COVID-19 Healthcare Emergency Temporary Standard (ETS).

##### 5. Summary of the new rule or change (What does this filing do?):

OSHA issued an ETS to protect healthcare workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present. The ETS encompasses requirements for healthcare employers such as having a COVID-19 plan, promoting vaccination, medical management, disinfection procedures, face coverings, physical distancing, personal

protective equipment (PPE), etc.

**6. A) The agency finds that regular rulemaking would:**

x cause an imminent peril to the public health, safety, or welfare;

cause an imminent budget reduction because of budget restraints or federal requirements; or

x place the agency in violation of federal or state law.

**B) Specific reasons and justifications for this finding:**

OSHA has determined that COVID-19 places healthcare workers at risk across the United States. OSHA issued the ETS to protect employees in healthcare workplaces. In order for Utah to maintain its state-plan state status, it must be at least as effective as federal OSHA. The reason for this rule is to enable the Utah Occupational Safety and Health (UOSH) Division's enforcement of OSHA's COVID-19 Healthcare ETS and maintain its state-plan status. This emergency rule cannot go through the regular rulemaking process because OSHA has determined that COVID-19 is an emergency issue in the healthcare industry and all state-plan states must adopt this ETS to remain at least as effective as OSHA.

**Fiscal Information**

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

**A) State budget:**

There is a cost anticipated to the state budget.

Costs associated with the use of PPE, disinfecting, etc. are a normal part of public sector healthcare settings. Costs are minimal in situations where employees are fully vaccinated, as the requirements for masking and physical barriers are removed.

Costs associated with work removal are as follows:  
Employers with 10 or fewer employees on the date that the ETS becomes effective are not required to maintain pay for removed employees.

Employers with fewer than 500 employees must pay the employee's regular pay, up to \$1,400 per week, for the first two weeks that the employee is removed. Beginning in the third week, if the employee's removal continues that long, the employer must pay two thirds of the same regular pay the employee would have received if working, up to \$200 a day (equivalent to \$1,000 per week in most cases).

Employers with 500 or more employees must pay the employee's salary up to \$1,400 per week during the entire period of removal, until the employee meets the return to work criteria described below.

Employers with more than 10 employees must also continue to provide the benefits to which the employee is normally entitled (e.g., employer-sponsored health insurance) during the removal period.

**B) Local governments:**

There is a cost anticipated to local governments.

Costs associated with the use of PPE, disinfecting, etc. are a normal part of public sector healthcare settings. Costs are minimal in situations where employees are fully vaccinated, as the requirements for masking and physical barriers are removed.

Costs associated with work removal are as follows:

Employers with 10 or fewer employees on the date that the ETS becomes effective are not required to maintain pay for removed employees.

Employers with fewer than 500 employees must pay the employee's regular pay, up to \$1,400 per week, for the first two weeks that the employee is removed. Beginning in the third week, if the employee's removal continues that long, the employer must pay two thirds of the same regular pay the employee would have received if working, up to \$200 a day (equivalent to \$1,000 per week in most cases).

Employers with 500 or more employees must pay the employee's salary up to \$1,400 per week during the entire period of removal, until the employee meets the return to work criteria described below.

Employers with more than 10 employees must also continue to provide the benefits to which the employee is normally entitled (e.g., employer-sponsored health insurance) during the removal period.

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

There is a cost anticipated to small businesses.

Costs associated with the use of PPE, disinfecting, etc. are a normal part of the healthcare industry. Costs are minimal in situations where employees are fully vaccinated, as the requirements for masking and physical barriers are removed.

Costs associated with work removal are as follows:

Employers with 10 or fewer employees on the date that the ETS becomes effective are not required to maintain pay for removed employees.

Employers with fewer than 500 employees must pay the employee's regular pay, up to \$1,400 per week, for the first two weeks that the employee is removed. Beginning in the third week, if the employee's removal continues that long, the employer must pay two thirds of the same regular pay the employee would have received if working, up to \$200 a day (equivalent to \$1,000 per week in most cases).

Employers with more than 10 employees must also continue to provide the benefits to which the employee is normally entitled (e.g., employer-sponsored health insurance) during the removal 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**):

There is a cost anticipated to persons other than small businesses, non-small businesses, state, or local government entities.

Costs associated with the use of PPE, disinfecting, etc. are a normal part of the healthcare industry. Costs are minimal in situations where employees are fully vaccinated, as the requirements for masking and physical barriers are removed.

Costs associated with work removal are as follows:

Employers with fewer than 500 employees must pay the employee's regular pay, up to \$1,400 per week, for the first two weeks that the employee is removed. Beginning in the third week, if the employee's removal continues that long, the employer must pay two thirds of the same regular pay the employee would have received if working, up to \$200 a day (equivalent to \$1,000 per week in most cases).

Employers with 500 or more employees must pay the employee's salary up to \$1,400 per week during the entire period of removal, until the employee meets the return to work criteria described below.

Employers with more than 10 employees must also continue to provide the benefits to which the employee is normally entitled (e.g., employer-sponsored health insurance) during the removal period.

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

There is no cost anticipated to affected persons.

**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):

In order to ensure the standards adopted by UOSH are at least as effective as OSHA, and that healthcare employees are protected from workplace exposure to COVID-19, UOSH is moving to adopt this ETS. In order to maintain Utah's state-plan status, UOSH is required to adopt this ETS from OSHA. Exemptions from masking, distancing, etc. are available for healthcare employees that are fully vaccinated. It is anticipated that many in the healthcare industry have already implemented similar requirements in their workplaces, so the impact should be minimal. Jaceson R. Maughan, Commissioner

## Citation Information

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

Section 34A-6-104

## Incorporations by Reference Information

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

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	29 CFR 1910.502
<b>Publisher</b>	Government Printing Office
<b>Date Issued</b>	June 21, 2021

**B) This rule adds, updates, or removes the following title of materials incorporated by references:**

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	29 CFR 1910.504
<b>Publisher</b>	Government Printing Office
<b>Date Issued</b>	June 21, 2021

**C) This rule adds, updates, or removes the following title of materials incorporated by references:**

	Third Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	29 CFR 1910.505
<b>Publisher</b>	Government Printing Office
<b>Date Issued</b>	June 21, 2021

**D) This rule adds, updates, or removes the following title of materials incorporated by references:**

	Fourth Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	29 CFR 1910.509
<b>Publisher</b>	Government Printing Office

<b>Date Issued</b>	June 21, 2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	11/22/2021
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**R614. Labor Commission, Occupational Safety and Health.****R614-1. General Provisions.****R614-1-4. Incorporation of Federal Standards.**

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2020, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in subsection 34A-6-301(3)(b)(ii) of the Utah OSH Act and UAC R614-1-5(B)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. OSHA emergency temporary standard found in 29 CFR 1910.502, 29 CFR 1910.504, 29 CFR 1910.505 and 29 CFR 1910.509, of the June 21, 2021, edition through its expiration at midnight on December 21, 2021, are incorporated by reference.

[3]4. 29 CFR 1910.6 and 1910.21 through the end of part 1910, of the July 1, 2020, edition are incorporated by reference.

[4]5. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2020, edition are incorporated by reference.

**KEY:** safety

**Date of Last Change:** November 22, 2021

**Notice of Continuation:** October 19, 2017

**Authorizing, and Implemented or Interpreted Law:** 34A-6

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R634-4</b>	<b>Filing ID:</b> 54154
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Administration	
<b>Building:</b>	DNR Complex	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kaelyn Anfinen	801-538-7201	kaelyn@dnr.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
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R634-4. Health Reform – Health Insurance Coverage in State Contracts –Implementation

**3. Effective Date:**

11/23/2021

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

Due to confusion in filing at the agency level, the agency failed to file a five-year review and notice of continuation and the penalty was expiration of Rule R634-2. The agency is filing this rule as an emergency rule to place the rule back into effect while a standard rule filing can be completed. The previous rule was Rule R634-2 but because rule numbers cannot be reused, the rule number is now R634-4.

**5. Summary of the new rule or change (What does this filing do?):**

This filing is to replace Rule R634-2, Health Reform – Health Insurance Coverage in State Contracts – Implementation, which expired because the five-year review and notice of continuation was not filed by the deadline. The rule number is changed to Rule R634-4 but the text is identical. (EDITOR'S NOTE: The notice of expiration of Rule R634-2 is under ID 51533 in this issue, December 15, 2021, of the Bulletin.)

**6. A) The agency finds that regular rulemaking would:**

<input type="checkbox"/>	cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/>	cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/>	place the agency in violation of federal or state law.

**B) Specific reasons and justifications for this finding:**

This rule authorizes the agency to establish rules related to health insurance provisions in certain design and or/construction contracts and by not having an effective rule the Department of Natural Resources (DNR) would be in violation of Subsection 79-2-404(6), Contracting powers of department –Health insurance coverage.

**Fiscal Information****7. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This emergency rule filing places into effect the rule that had previously been effective without any additional changes. Therefore, DNR has determined that this emergency rule does not create a cost or savings impact to the state budget or DNR's budget since the changes will not increase workload and can be carried out with existing budget.



<b>B) Local governments:</b>
Since the proposed emergency filing makes no changes to the rule text that was previously effective, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule change does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed emergency rule will not directly impact small businesses nor is there a service required of them.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
The proposed emergency rule will not directly impact non-small businesses because a service is not required of them.
<b>E) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
There is no cost compliance with the re-issuance of this rule because it is not being amended at this time.
<b>F) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):
The Executive Director of the Utah Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

#### Citation Information

<b>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:</b>
Section 79-2-404

#### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Brian Steed, DNR Executive Director	<b>Date:</b>	11/23/2021
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#### R634. Natural Resources, Administration.

#### R634-4. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

##### R634-4-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 79-2-404.

##### R634-4-2. Authority.

This rule is authorized under Subsection 79-2-404(6), which directs the Department of Natural Resources to make rules related to health insurance provisions in certain design and/or construction contracts.

##### R634-4-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 79-2-404.

(2) In addition:

(a) "Department" means the Department of Natural Resources created in Section 79-2-201.

(b) "Employee(s)" means an "employee", "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(c) "Executive Director" means the executive director of the department who is appointed under Section 79-2-202, including, unless otherwise stated, the Director's duly authorized designee.

(d) "State" means the State of Utah.

##### R634-4-4. Applicability of Rule.

(1) Except as provided in Subsections R634-4-4(2) or R634-4-4(3) below, Rule R634-4 applies to all design or construction contracts entered into by the Department, and

(a) applies to a prime contractor if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract; and

(b) applies to a subcontractor if the subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.

(2) Rule R634-4 does not apply if:

(a) the application of Rule R634-4 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) Rule R634-4 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R634-4-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R634-4-4(1) is guilty of an infraction.

##### R634-4-5. Contractors and Subcontractors to Comply with Section 79-2-404.

(1) All contractors and subcontractors that are subject to the requirement of Section 79-2-404 shall comply with all the requirements, penalties and liabilities of Section 79-2-404.

(2) If a subcontractor of the contractor is subject to Section 79-2-404(2) or Section R634-4-4, the contractor shall:

(a) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(b) certify to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

##### R634-4-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

## NOTICES OF 120-DAY (EMERGENCY) RULES

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by Rule R634-4 or Section 79-2-404;

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

### **R634-4-7. Requirements and Procedures a Contractor Must Follow.**

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 79-2-404.

(1) Demonstrating Compliance with Health Insurance Requirements. A contractor (including design professional) shall demonstrate compliance with Subsection 79-2-404(5)(a) or (b) at the time of execution of each initial contract described in Subsection 79-2-404(2).

(a) The compliance is subject to an audit by the Department or the Office of Legislative Auditor General.

(b) A contractor (including design professional) subject to Subsection 79-2-404(2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and employees' dependents.

(c) Such demonstration shall be a certification on the form provided by the Department. The form shall also require compliance with Section R634-4-5(2) regarding subcontractors.

(d) The actuarially equivalent determination required for the qualified health insurance coverage is met by the contractor if the contractor provides the Department with a written statement of actuarial equivalency attached to the certification, which is not more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. The Contractor is responsible for collecting the statements as required by law from any of the subcontractors at any tier that must do so.

(2) For purposes of Rule R634-4-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 79-2-404(1)(c) that is provided by the Department of Health, in accordance with Section 26-40-115(2).

(3) The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

(4) Any contract subject to R634-4 shall contain a provision requiring compliance with Rule R634-4 from the time of execution and throughout the duration of the contract.

#### (5) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under Rule R634-4 conducted by the Department shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Department. The penalties that may be imposed by the Department if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Section 79-2-404 or Rule R634-4 include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the

first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of Section 79-2-404 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R634-2-7(5)(c)(i) as provided in Subsection 79-2-404(7)(a). An employee has a private right of action only against the employee's employer to enforce the provision of Subsection 79-2-404(7).

### **R634-4-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.**

Nothing in Rule R634-4 shall be construed as to create any contractual relationship whatsoever between the State or the Department with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts, contract requirements**

**Date of Last Change: November 23, 2021**

**Authorizing, and Implemented or Interpreted Law: 79-2-404**

#### **NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R990-200-5</b>	<b>Filing ID: 54147</b>
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#### **Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Housing and Community Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

## General Information

### 2. Rule or section catchline:

R990-200-5. Criteria for Allocating Volume Cap

### 3. Effective Date:

11/30/2021

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

An emergency rule change went into effect on 08/02/2021, which temporarily suspended Subsection R990-200-5(7). A rule amendment published in the November 15, 2021, issue of the Bulletin, proposed additional changes to Section R990-200-5. When the current emergency rule expires on 11/30/2021, the old rule will go back into effect before the public comment period for the rule amendment ends. Under the current rule, if a recipient of a volume cap allocation needs additional volume cap, it must first relinquish the volume cap it has already been awarded and submit a new application. At that point, the previously allocated volume cap goes back in the fund and the recipient will be graded as a new applicant. Depending on the number and score of the pending applications, there may not be enough available volume cap for the recipient to receive the additional volume cap needed, leaving the recipient not only without the additional volume cap, but without any volume cap at all. There is, therefore, a risk that compliance with the current rule will impair or prevent the completion of worthy projects in the public interest. This emergency rule change allows the Private Activity Bond Review Board to award additional volume cap as appropriate, until the amended rule can be enacted after public comment. (EDITOR'S NOTE: The proposed amendment to Rule R990-200 is under ID 54023 in the November 15, 2021, issue of the Bulletin.)

### 5. Summary of the new rule or change (What does this filing do?):

This rule change eliminates the need for a recipient to relinquish a volume cap allocation before submitting an application for a larger allocation. This rule change allows the Private Activity Bond Review Board to award additional volume cap as appropriate, without the need for the recipient to relinquish its initial allocation or complete a new application.

### 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:

Various recipients who have already been awarded a volume cap will need to request additional allocations at the 12/08/2021 meeting of the Bond Review Board, but the emergency rule rescission currently in place expires on 11/30/2021. If this emergency rule is not extended, those recipients would be required to relinquish their existing allocation before receiving the additional amount. Failure to amend this rule on an emergency basis would therefore negatively affect the public welfare by resulting in the loss of significant housing developments designed to serve the area's low-income residents. The emergency rule will be effective only until the effective date of the amended rule published in the November 15, 2021, Bulletin.

## Fiscal Information

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

#### A) State budget:

This emergency 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 emergency rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program does not rely on local governments for funding, administration, or enforcement.

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

This emergency rule change may have a positive fiscal impact for a project that is able to receive additional funding with this rule change. However, this rule change does not change the current available bond cap.

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

This emergency rule change may have a positive fiscal impact for a project that is able to receive additional funding with the rule change. However, this rule change does not change the current available bond cap.

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

This emergency rule change is not expected to cause any compliance costs for affected persons because the change does not create any new administrative fees.

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

This emergency rule change will have a positive fiscal impact on businesses that qualify for additional funding but will not change the available bond cap. Casey Cameron, 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 35A-8-2104		
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	11/16/2021
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**R990. Workforce Services, Housing and Community Development.****R990-200. Private Activity Bonds.****R990-200-5. Criteria for Allocating Volume Cap.**

(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 the purpose of 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 raised 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 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

(iii) 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 R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to Manufacturing Facility, Redevelopment and Exempt Facilities 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,

(iii) tax increment financing, and

(iv) deferral of fees;

(h) competitive costs for construction and equipment related expenses; and

(i) ready-to-go status, including:

(i) manufacturing facility zoned for use,

(ii) proximity of infrastructure to site,

(iii) need for special infrastructure,

(iv) environmental study, if required by lender,

(v) current title report and site plan of project, and

(vi) building description.

(5) Prior to considering an application, a Board of Review member shall disclose the substance of any communication the member has had outside of a public meeting with an applicant or other interested party regarding the project.

(6) The allocation certificate issued for Multi-Family Housing volume cap shall restrict the occupancy of market rate rental

units to families whose incomes do not exceed 150% of Area Median Income (AMI), adjusted for family size, for at least 51 years from the date on which at least 50% of the residential units in the project are first occupied.

(a) Recipients and owners shall comply with any terms of the Certificate of Allocation, including any Additional Conditions approved by the Board of Review.

(b) Recipients and owners shall submit documentation to Private Activity Bond program staff within 15 days after the issuance of bonds, and at other times upon request, to verify compliance with the terms of the Certificate of Allocation. [

~~(7) A recipient may not be awarded additional volume cap for a previously funded project. A recipient may relinquish allocated volume cap and submit a new application for the total amount requested.]~~

**KEY: allocation, private activity bond, volume cap**

**Date of Last Change: November 30, 2021**

**Authorizing, and Implemented or Interpreted Law: 35A-8-2104**

#### **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](http://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		
Utah Admin. Code Ref (R no.):	R17-9	Filing ID: 53483
Effective Date:	11/17/2021	

## Agency Information

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Archives and Records Service	
<b>Building:</b>	State Archives	
<b>Street address:</b>	346 S Rio Grande St	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kendra Yates	801-531-3856	kendrayates@utah.gov
Rebekkah Shaw	801-531-3851	rshaw@utah.gov

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

## General Information

2. Rule catchline:
R17-9. Electronic Participation at Meetings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Open and Public Meetings Act, Subsection 52-4-207(2)(a), states that a "public body may not hold an electronic meeting unless the public body has adopted a

resolution, rule, or ordinance governing the use of electronic meetings."

## 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Division of Archives and Records Service (Division) has not received any written comments about this rule.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The statute still requires that the Division has this rule in order to hold electronic meetings. Therefore, this rule should be continued.

The Division has identified some amendments to make to this rule and will be filing those at a later date.

## Agency Authorization Information

Agency head or designee, and title:	Kenneth Williams, Division Director	Date:	11/15/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R21-3	Filing ID: 53507
Effective Date:	12/01/2021	

## Agency Information

1. Department:	Government Operations
Agency:	Debt Collection
Room no.:	Third Floor
Building:	Taylorville State Office Building

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Allyson Branch	801-597-3523	abbranch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R21-30 Debt Collection Through Administrative Offset
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The statutory authority for this rule are the following statutes: Section 63A-3-310 and Subsection 63A-3-504(2)(f).
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule authorizes the Office of State Debt Collection to reduce or eliminate accounts receivable through administrative offset of tax overpayments, or state payments due to entities. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Allyson Branch, CPA	<b>Date:</b>	12/01/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	R25-20	<b>Filing ID:</b>	53492
<b>Effective Date:</b>	11/30/2021		

**Agency Information**

<b>1. Department:</b>	Government Operations
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<b>Agency:</b>	Finance	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janica Gines	801-957-7727	jmgines@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R25-20. Indigent Defense Funds Board, Procedures for Electronic Meetings
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule establishes procedures by which the board members may participate in electronic meetings including requirements regarding the posting of the agenda for the meeting, establishment of the anchor location, and methods by which participation can occur.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received in the last five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The need for this rule still exists. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Janica Gines, Director	<b>Date:</b>	11/30/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R152-6	Filing ID: 50233
Effective Date:	11/24/2021	

**Agency Information**

1. Department:	Commerce	
Agency:	Consumer Protection	
Building:	Heber Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Daniel Larsen	801-530-6145	dblarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R152-6. Administrative Procedures 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:
This rule is enacted in accordance with Subsection 13-2-5(1), which empowers the Division of Consumer Protection (Division) director to issue rules to administer and enforce statutes described by Section 13-2-1, and in accordance with Subsection 63G-4-202(1), which allows an agency to enact a rule to designate categories of administrative proceedings as informal.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division is unaware of 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:
This rule allows the Division to efficiently conduct informal adjudicative proceedings while also allowing for formal adjudicative proceedings when necessary. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Daniel Larsen, Commerce Analyst	Date:	11/24/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Utah Admin. Code Ref (R no.):	R152-15	Filing ID: 50234
Effective Date:	11/24/2021	

**Agency Information**

1. Department:	Commerce	
Agency:	Consumer Protection	
Building:	Heber Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Daniel Larsen	801-530-6145	dblarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R152-15. Business Opportunity Disclosure 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:
This rule is enacted in accordance with Sections 13-2-5 and 13-15-3, which empower the division director to issue rules to administer and enforce Title 13, Chapter 15, Business Opportunity Disclosure Act, and with Section 13-15-4.5, which empowers the Division of Consumer Protection (Division) to make rules regarding exemption filings.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division is unaware of 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:
This rule ensures that a filing made by a seller of a business opportunity in accordance with Sections 13-15-4 or 13-15-4.5 includes necessary documentation and the

required filing fee. This rule also informs regulated parties of when a disclosure provided to the Division must be amended. Therefore, this rule should be continued.

#### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Daniel Larsen, Commerce Analyst	<b>Date:</b>	11/24/2021
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#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Utah Admin. Code Ref (R no.):</b>	<b>R152-20</b>	<b>Filing ID: 50238</b>
<b>Effective Date:</b>	<b>11/24/2021</b>	

#### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6145	dblarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule catchline:</b>
R152-20. New Motor Vehicle Warranties Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted in accordance with Section 13-2-5, which empowers the Division of Consumer Protection (Division) director to promulgate rules to administer and enforce Title 13, Chapter 20, New Motor Vehicle Warranties Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Division is unaware of any written comments regarding this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

This rule defines terms used by the New Motor Vehicle Warranties Act that are critical to effectively administering and enforcing the Act. The definitions provide predictability to regulated parties and assist the Division in protecting consumers. This rule also clarifies the procedure for repurchasing a leased, nonconforming motor vehicle and for replacing a nonconforming vehicle that is of a model that is no longer produced by a manufacturer. Therefore, this rule should be continued.

#### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Daniel Larsen, Commerce Analyst	<b>Date:</b>	11/24/2021
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#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Utah Admin. Code Ref (R no.):</b>	<b>R152-22</b>	<b>Filing ID: 50243</b>
<b>Effective Date:</b>	<b>11/24/2021</b>	

#### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6145	dblarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule catchline:</b>
R152-22. Charitable Solicitations Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted in accordance with: Section 13-2-5, which empowers the Division of Consumer Protection (Division) director to promulgate rules to administer and enforce Title 13, Chapter 22, Charitable Solicitations Act; Subsections 13-22-6(1)(b)(xvi) and 13-22-9(1)(b)(xiv), which allows the Division to require by rule information on an application for registration; Subsection 13-22-8(4), which allows the Division to require an organization that is exempt from registration to file a notice or renewal of a claim of exemption; and Subsection 13-22-22(2), which

allows the Division to require by rule certain terms in an agreement between a charitable organization and commercial co-venturer regarding a charitable sales promotion.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Division is not aware of 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:**

This rule assists the Division and regulated entities by establishing what is required to be submitted to the Division in an application for registration as a charitable organization, professional fundraiser, or fundraising counsel or consultant. It also clarifies how organizations that have no financial history may comply with registration requirements. This rule establishes how an organization may file a notice of a claim of exemption and allows the Division to charge a fee to administer claims of exemption. This rule also allows the Division flexibility in processing incomplete applications for registration, which allows the Division to work with applicants and avoid potentially unnecessary application denials. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Daniel Larsen, Commerce Analyst	<b>Date:</b>	11/24/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R152-23</b>	<b>Filing ID:</b>	<b>50245</b>
<b>Effective Date:</b>	<b>11/24/2021</b>		

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6145	dblarsen@utah.gov

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

**General Information**

**2. Rule catchline:**

R152-23. Health Spa Services Protection 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:**

This rule is enacted in accordance with Subsection 13-2-5(1), which empowers the Division of Consumer Protection (Division) director to promulgate rules to administer and enforce Title 13, Chapter 23, Health Spa Services Protection Act.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Division is not aware of 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:**

This rule assists the Division and regulated entities by establishing the uniform content of an application for registration and allows the Division to process those applications in an efficient manner. This rule also establishes required terms in consumer contracts for health spa services that protect consumers and clarifies certain procedures when a consumer rescinds a contract for health spa services. This rule establishes procedures for a health spa that closes normal operations for 10 or more business days, which allows the Division to protect consumers. Therefore, this rule should be continued.

The Division has submitted a proposed repeal and reenact of this rule due to H.B. 321 changes made during the 2021 General Session. (EDITOR'S NOTE: The proposed repeal and reenactment of Rule R152-23 is under ID 54059 in the November 15, 2021, Bulletin).

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Daniel Larsen, Commerce Analyst	<b>Date:</b>	11/24/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R152-42</b>	<b>Filing ID:</b>	<b>50241</b>
<b>Effective Date:</b>	<b>11/24/2021</b>		

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6145	dblarsen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R152-42. Uniform Debt-Management Services Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted in accordance with Section 13-2-5, which empowers the Division of Consumer Protection (Division) director to promulgate rules to administer and enforce Title 13, Chapter 42, Uniform Debt-Management Services Act (UDMSA), and with Subsections 13-42-102(9)(c), 13-42-112(2), 13-42-112(2), 13-42-132(3), and 13-42-132(6), which also grant the Division director (as "administrator") rulemaking authority.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Division is not aware of any written comments regarding this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule establishes a "base year" in accordance with the UDMSA in Section R152-442-6. This rule also establishes the states in which registration satisfies the Division's registration requirements. This rule also establishes the contents of registration applications, which allows the Division to efficiently process applications for registration and provides certainty to regulated entities. This rule's provisions are either mandated by the UDMSA or assist the Division's administration and enforcement of the UDMSA. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Daniel Larsen, Commerce Analyst	<b>Date:</b>	11/24/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-110</b>	<b>Filing ID:</b>	<b>53056</b>
<b>Effective Date:</b>	<b>12/01/2021</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-110. General Requirements: State Implementation Plan
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Rule R307-110 is authorized by Section 19-2-104. Section 19-2-104 gives the Utah Air Quality Board the power to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source." Rule R307-110 is the rule that incorporates Utah's State Implementation Plans into state law, as required by section 110 of the Federal Clean Air Act. State Implementation Plans contain provisions that help abate air pollution, set emission limits, and prevent air pollution for the purpose of attaining federal air quality standards. Therefore, Rule R307-110 has been properly enacted under Section 19-2-104.

**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:**

Rule R307-110 has been amended 13 times since the last five-year review in 2017. There have been hundreds of comments on how to improve the State Implementation Plans that this rule incorporates by reference. However, there have been no comments 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:**

Rule R307-110 is required by the Federal Clean Air Act. Section 110 of the Clean Air Act requires states to develop State Implementation Plans that demonstrate how the state will meet federal air quality standards. Rule R307-110 is necessary because it incorporates Utah's State Implementation Plans into state law so that the plans can be enforced, and Utah can attain federal air quality standards. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-120</b>	<b>Filing ID: 50572</b>
<b>Effective Date:</b>	<b>12/01/2021</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

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

R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment

**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 19-12-305 authorizes the Air Quality Board to make rules related to the procedures for evaluating and applying for certification for tax exempt status for pollution control equipment. Rule R307-120 provides the process for evaluating and applying for certification for tax exempt status for pollution control equipment.

**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:**

This rule has had no comments or substantive amendments since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule articulates and implements a process to receive a tax exemption for specified types of pollution control equipment as required by statute. The absence of critical comments since the last review period suggests that the current rule is acceptable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-130</b>	<b>Filing ID: 50579</b>
<b>Effective Date:</b>	<b>12/01/2021</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality		
<b>Agency:</b>	Air Quality		
<b>Building:</b>	Multi-Agency State Office Building		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 144820		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820		

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-130. General Penalty Policy
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule was enacted under Section 19-2-104. Under Section 19-2-104, the Utah Air Quality Board is given the power to promulgate rules to prevent air pollution. Rule R307-130 prevents air pollution by providing penalties for noncompliance with air quality rules, orders, or permits.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
This rule has had no written comments or substantive amendments since the last five-year review. The Division of Air Quality has received suggestions for improving this rule that will be considered when this rule is next amended.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is needed to implement a penalty structure for violations, as established by Section 19-2-115. This rule also establishes categories of violations, prescribing penalties that are reasonable and appropriate to the severity of the violation. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	R307-135	<b>Filing ID:</b>	50578
<b>Effective Date:</b>	12/01/2021		

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality

<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-135. Enforcement Response Policy for Asbestos Hazard Emergency Response Act
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule was enacted by the Utah Air Quality Board under the authority of Subsection 19-2-104(1)(d). Subsection 19-2-104(1)(d) allows the Utah Air Quality Board to promulgate rules implementing the federal Asbestos Hazard Emergency Response Act in Utah. Subsections 19-2-115(2)(b) and (c) authorize penalties for violations of rules adopted under Section 19-2-104 for implementation of the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response. Rule R307-135 sets forth the conditions for issuance of a notice of violation and the penalties to be assessed for non-compliance with the rule.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
This rule has had no written comments or substantive amendments since the last five-year review. The Division of Air Quality has received suggestions for improving this rule that will be considered when this rule is next amended.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is needed to implement a penalty structure for violations of the Asbestos Hazard Emergency Response Act. This rule establishes broad categories for violations and incentivizes compliance by communicating to potential violators how specific efforts on their part can increase or decrease the penalties assessed. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-320</b>	<b>Filing ID:</b>	<b>50612</b>
<b>Effective Date:</b>	<b>12/01/2021</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-320. Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Rule R307-320 was enacted under the authority of Subsection 19-2-104(1)(h), which allows the Air Quality Board to promulgate rules that create an employer-based trip reduction program in nonattainment areas.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received on this rule since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

This rule helps Utah satisfy its obligations under Section 110 of the Clean Air Act. Section 110 requires states to develop implementation plans that demonstrate how they will comply with National Ambient Air Quality Standards. Rule R307-320 is a control strategy included in Utah's State Implementation Plan to reduce ambient ozone and its precursor emissions. It is also a contingency measure for carbon monoxide. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-325</b>	<b>Filing ID:</b>	<b>50614</b>
<b>Effective Date:</b>	<b>12/01/2021</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-325. Ozone Nonattainment and Maintenance Areas: General Requirements
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

source." Subsection 19-2-101(2) states, "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety." The Air Quality Board promulgated Rule R307- 325 under the authority found in Section 19-2-104 in order to fulfill the purpose found in Section 19-2-101 and to satisfy the requirements found in Section 110 and Part D of the Clean Air Act.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No comments have been received on this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required by the Clean Air Act. Section 110 and Part D of the Clean Air Act requires the to develop a State Implementation Plan that will allow the state to attain certain federal air quality standards. Without the state plan, the EPA would be required to impose a federal implementation plan, and the state could lose some of its ability to make its own policy decisions on how it will comply with federal air quality standards. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-326</b>	<b>Filing ID: 50615</b>
<b>Effective Date:</b>	<b>12/01/2021</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	Multi-Agency State Office Building
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144820
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820

**Contact person(s):**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

**General Information**

**2. Rule catchline:**

R307-326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

The Utah Air Quality Board enacted Rule R307-326 under the authority of Subsection 19- 2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-326 does this by establishing reasonably available control technology for controlling hydrocarbon emissions from petroleum refineries located in ozone nonattainment and maintenance areas.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No comments have been received on this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110- 13. The plan is also required by Section 110 of the Clean Air Act. Without the state plan, the EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-327	Filing ID: 50616
Effective Date:	12/01/2021	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R307-327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage
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 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-327 requires petroleum refineries located within an ozone nonattainment area to have measures in place to reduce emissions of volatile organic compounds from their large liquid storage tanks. Volatile organic compounds are a precursor to ozone formation.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received on this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-

110-13. The plan is also required by Section 110 of the Clean Air Act. This rule is necessary for Utah's State Implementation Plan to meet federal ozone standards. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	11/03/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-328	Filing ID: 54020
Effective Date:	12/01/2021	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R307-328. Gasoline Transfer and Storage
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 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-328 does this by requiring the use of reasonably available control technology to capture gasoline vapors during the filling of gasoline vehicles and storage tanks in any ozone nonattainment or maintenance area including Utah and Weber Counties.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No comments have been received on this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is also required by Section 110 of the Clean Air Act. Without the state plan, the EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-335</b>	<b>Filing ID: 50621</b>
<b>Effective Date:</b>	<b>12/01/2021</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R307-335. Degreasing

**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 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-335 does this by establishing reasonably available control technology for degreasing and solvent cleaning operations located in ozone and PM<sub>2.5</sub> nonattainment or maintenance areas.

**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:**

This rule has been amended one time since the last five-year review. No comments were submitted during that rulemaking. The Division of Air Quality did not receive any other written comments on this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required under the state implementation plan for ozone and PM<sub>2.5</sub>, incorporated by reference under Section R307-110-13. The plan is required by Section 110 of the Clean Air Act, and without this rule the EPA would have to write a Federal Implementation Plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-341</b>	<b>Filing ID: 50624</b>
<b>Effective Date:</b>	<b>12/01/2021</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality		
<b>Agency:</b>	Air Quality		
<b>Building:</b>	Multi-Agency State Office Building		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 144820		

<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-341. Ozone Nonattainment and Maintenance Areas: Cutback Asphalt
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-341 does this by establishing reasonably available control technology for the application of asphalt in any ozone nonattainment or maintenance areas.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Division of Air Quality did not receive any written comments on this rule since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required by Section 110 of the Clean Air Act, and without this rule the EPA would have to write a Federal Implementation Plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R307-343</b>	<b>Filing ID:</b>	<b>50630</b>
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<b>Effective Date:</b>	<b>12/01/2021</b>
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**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R307-343. Wood Furniture Manufacturing Operations
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source." Rule R307-343 does this by requiring that certain wood furniture manufacturers use coatings that are compliant with the Volatile Organic Compound (VOC's) content limits found in Section R307-343-4.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
This rule has been amended one time since the last five-year review. No comments were submitted during that rulemaking. The Division of Air Quality did not receive any other written comments on this rule since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Rule R307-343 limits the emissions of VOC's, a precursor to ozone and PM <sub>2.5</sub> , from wood furniture manufacturers in ozone and PM <sub>2.5</sub> nonattainment and maintenance areas. This rule outlines emissions standards for wood furniture manufacturing operations and should be continued. This

rule is part of a proactive strategy to ensure that Salt Lake, Utah, Box Elder, Tooele and Davis counties meet the ozone and PM<sub>2.5</sub> 24-Hour standards. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	11/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R392-510</b>	<b>Filing ID:</b>	<b>53813</b>
<b>Effective Date:</b>	<b>11/16/2021</b>		

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R392-510. Utah Indoor Clean Air Act
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Subsection 26-1-30(2), Section 26-15-12, and Title 26, Chapter 38. This rule sets standards and requirements for smoking indoors, including requirements for Signage and Public Announcements.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments were received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is needed to set standards and requirements for smoking indoors, including requirements for Signage and Public Announcements. The Department of Health received no comments in opposition to the continuation of this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Interim Executive Director	<b>Date:</b>	10/29/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R426-5</b>	<b>Filing ID:</b>	<b>52518</b>
<b>Effective Date:</b>	<b>11/16/2021</b>		

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Emergency Medical Services	
<b>Room no.:</b>	404	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142004	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2004	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Guy Dansie	801-560-1544	gdansie@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R426-5. Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Rules are enacted under Section 26-8a-302 for the licensing of Emergency Medical Service Personnel. The terms set forth in Rule R426-5 discuss the process for fulfilling the requirements.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments were received since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Department of Health needs this rule since it provides the requirements for emergency service personnel to provide pre-hospital patient care. No comments in opposition were received. Therefore, this rule should be continued.

**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 62A-4a-213 authorizes the Division of Child and Family Services to establish and operate a psychotropic medication oversight panel for children in the custody of Child and Family Services.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments were received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is necessary in order for the Division of Child and Family Services to establish and operate a psychotropic medication oversight panel for children in the custody of Child and Family Services to ensure that foster children are being prescribed psychotropic medication consistent with their needs. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nate Checketts, Executive Director	<b>Date:</b>	11/17/2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/30/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R512-311</b>	<b>Filing ID:</b>	<b>51248</b>
<b>Effective Date:</b>	<b>12/01/2021</b>		

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R549-1</b>	<b>Filing ID:</b>	<b>51323</b>
<b>Effective Date:</b>	<b>11/24/2021</b>		

**Agency Information**

<b>1. Department:</b>	Human Services		
<b>Agency:</b>	Child and Family Services		
<b>Building:</b>	MASOB		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Carol Miller	801-557-1772	carolmiller@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R512-311. Out-of-Home Services

**Agency Information**

<b>1. Department:</b>	Human Services		
<b>Agency:</b>	Public Guardian (Office of)		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Xia Erickson	801-538-4304	xlitz@utah.gov	
Jonah Shaw	801-538-4225	jshaw@utah.gov	
Please address questions regarding information on this notice to the agency.			

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

R549-1. Eligibility and Services Priority

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is authorized under Section 62A-14-105 and is required to establish procedures and standards for the determination of eligibility and establish services as required by Title 62A, Chapter 14.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments were received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required as it establishes the criteria for eligibility and services priority for the Office of Public Guardian. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	11/24/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-176</b>	<b>Filing ID: 51391</b>
<b>Effective Date:</b>	<b>11/19/2021</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

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

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

R590-176. Health Benefit Plan Enrollment

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsection 31A-2-201(3) authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-2-202(2) authorizes the insurance commissioner to prescribe forms for the Department of Insurance (Department) to use in collecting information. This rule provides enrollment standards for carriers that provide health benefit plan coverage to individuals and small employers. It also requires insurers to file a certificate with the Department that includes information about the individuals covered, the qualifying conditions, and the uninsurable count at the end of an enrollment.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Department has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule provides clarification for Title 31A, Chapter 30, regarding the federal Health Insurance Portability and Accountability Act (HIPAA). This rule provides standards that must be met for an insurer to be waived from the requirements of Title 31A, Chapter 30, and defines what constitutes meeting the enrollment cap. It also addresses general requirements to make sure insurers treat health benefit applicants fairly. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	11/19/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-181</b>	<b>Filing ID: 51382</b>
<b>Effective Date:</b>	<b>11/19/2021</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-181. Yankee Bond Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-18-105(16) authorizes the insurance commissioner to specify an investment, besides those listed in Section 31A-18-105, that insurers can invest in. This rule allows insurers to invest in Yankee bonds. The reference in Section R590-181-1 is incorrect and will be corrected when this rule is amended in compliance with Executive Order No. 2021-12.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Due to the fact that some insurers are investing in Yankee bonds, this rule is necessary to provide guidelines that make sure the quality of the bond is high and does not take up a major share of the insurer's portfolio. Without this rule, insurers would not be able to invest in Yankee bonds at all. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	11/19/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-182</b>	<b>Filing ID:</b>	<b>51384</b>
<b>Effective Date:</b>	<b>11/19/2021</b>		

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-182. Risk Based Capital Instructions
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-17-601(7) authorizes the insurance commissioner to adopt risk based capital (RBC) instructions to be used by licensed insurers and filed annually with the Department of Insurance (Department).
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department 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 should not be continued. Upon review, this rule merely offers citations to the relevant provisions of the Insurance Code. The Insurance Code provides that RBC reports and instructions are important to ensure that Utah insurance companies report on the same basis as companies from other states. Without this uniformity, cost to companies and to the state would increase significantly, which would also increase costs to Utah policyholders. However, because these provisions are already in state code and this rule provides no additional guidance or information, this rule should be repealed. The Department will continue this rule for now and begin the repeal process immediately.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	11/19/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R600-2</b>	<b>Filing ID: 51478</b>
<b>Effective Date:</b>	<b>11/18/2021</b>	

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3rd Floor	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R600-2. Operations

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 34A-1-104 authorizes the Labor Commission (Commission) to adopt rules necessary to administer the Workers' Compensation Act, the Occupational Disease Act, the Antidiscrimination Act, and the Occupational Safety and Health Act. Pursuant to that authority, and in order to provide for the orderly conduct of Commission business, the Commission has adopted Rule R600-2, which establishes the Commission's regular business hours.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received during the last five year review period.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

As part of its duty to administer the various statutes identified above, the Commission is required to establish standards for conduct of Commission business, including rules for hours of business and filing of business documents. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	12/01/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R602-1</b>	<b>Filing ID: 53711</b>
<b>Effective Date:</b>	<b>11/30/2021</b>	

**Agency Information**

<b>1. Department:</b>	Labor Commission		
<b>Agency:</b>	Adjudication		
<b>Room no.:</b>	3rd Floor		
<b>Building:</b>	Heber M Wells Building		
<b>Street address:</b>	160 E 300 S		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 146600		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600		



Contact person(s):		
Name:	Phone:	Email:
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R602-1. Office Record
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 34A-1-104 authorizes the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings. In order to administer an orderly system of adjudication, it is necessary for the Commission to set standards for computing filing deadlines and other time limits involved in the adjudicative process, and to set witness fees.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five-year review period.
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 remains necessary to establish standards for computing time limits and setting witness fees in the Commission's adjudicative process. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Jacson R. Maughan, Commissioner	Date:	12/01/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Utah Admin. Code Ref (R no.):	R602-2	Filing ID:	53751
Effective Date:	11/30/2021		

**Agency Information**

1. Department:	Labor Commission
Agency:	Adjudication
Room no.:	3rd Floor

Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	Phone:	Email:
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims
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 34A-1-104 authorizes the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings to resolve workers' compensation and occupational disease claims. Sections 34A-1-104 and 34A-2-802 also authorize the Commission to adopt rules to carry out those adjudicative functions.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five-year review period.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
As part of the Commission's continuing responsibility to administer a system for adjudication of workers' compensation and occupational disease claims, it is necessary for the Commission to establish procedures for pleadings and discovery, standards for use and compensation of medical panels, as well as standards for evaluating settlement agreements. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Jacson R. Maughan, Commissioner	Date:	12/01/2021
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

### NOTICE OF EXPIRED RULE

Utah Admin. Code Ref (R no.):	R634-2	ID No. 51533
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#### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Administration	
<b>Street address:</b>	1594 W North Temple	
<b>City, state, and zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

The five-year review and notice of continuation was not filed for this rule by the deadline. This rule has expired and will be removed from the Utah Administrative Code.

(EDITOR'S NOTE: Due to confusion in filing at the Department of Natural Resources, Administration (Agency) level, the Agency failed to file the five-year review and the penalty was expiration of this rule. The Agency is filing an emergency rule to place it back into effect while a standard new rule filing can be completed. The emergency rule for Rule R634-4, Health Reform – Health Insurance Coverage in State Contracts – Implementation, is effective as of 11/23/2021 and is under ID 54154, in this issue, December 15, 2021, of the Bulletin. The rule number is changed from R634-2 to R634-4 because numbers cannot be reused. However, the rule text is exactly the same.)

#### General Information

2. Title of rule (catchline):	R634-2. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	
3. Effective Date:	11/23/2021	
4. Summary:		

### NOTICE OF EXPIRED RULE

Utah Admin. Code Ref (R no.):	R856-1	ID No. 52055
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#### Agency Information

1. Department:	Science Technology and Research Governing Authority (Utah)
Agency:	Administration

## NOTICES OF FIVE YEAR EXPIRATIONS

<b>Street address:</b>	Not Applicable	
<b>City, state, and zip:</b>	Not Applicable	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy Lancaster	L. 801-957-7102	rulesonline@utah.gov

## General Information

<b>2. Title of rule (catchline):</b>	
R856-1. USTAR Technology Acceleration Program Grants	
<b>3. Effective Date:</b>	11/17/2021
<b>4. Summary:</b>	
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.	

## NOTICE OF EXPIRED RULE

<b>Utah Admin. Code Ref (R no.):</b>	<b>R856-2</b>	<b>ID No. 52053</b>
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## Agency Information

<b>1. Department:</b>	Science Technology and Research Governing Authority (Utah)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	Not Applicable	
<b>City, state, and zip:</b>	Not Applicable	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

## General Information

<b>2. Title of rule (catchline):</b>
R856-2. USTAR University-Industry Partnership Program Grants

<b>3. Effective Date:</b>	11/17/2021
<b>4. Summary:</b>	
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.	

## NOTICE OF EXPIRED RULE

<b>Utah Admin. Code Ref (R no.):</b>	<b>R856-3</b>	<b>ID No. 52061</b>
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## Agency Information

<b>1. Department:</b>	Science Technology and Research Governing Authority (Utah)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	Not Applicable	
<b>City, state, and zip:</b>	Not Applicable	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

## General Information

<b>2. Title of rule (catchline):</b>	
R856-3. USTAR University Technology Acceleration Grants	
<b>3. Effective Date:</b>	11/17/2021
<b>4. Summary:</b>	
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.	

## End of the Notices of Notices of Five Year Expirations Section

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Agriculture and Food

#### Plant Industry

No. 53989 (Amendment) R68-30: Independent Cannabis Testing Laboratory  
Published: 10/15/2021  
Effective: 11/30/2021

### Alcoholic Beverage Control

#### Administration

No. 53938 (Amendment) R82-1-102: Definitions  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53939 (Amendment) R82-1-304: General  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53940 (Amendment) R82-2-302: Advertising, Promotion, and Listing of Products  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53941 (Amendment) R82-2-306: Operational Restrictions  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53942 (Amendment) R82-2-308: Consignment Inventory Package Agencies  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53943 (Amendment) R82-3-102: Violation Schedule  
Published: 10/01/2021  
Effective: 12/01/2021

No. 53944 (Amendment) R82-5-202: Retail License Renewals

Published: 10/01/2021  
Effective: 12/01/2021

### Commerce

#### Occupational and Professional Licensing

No. 53992 (New Rule) R156-4a: Utah Professionals Health Program Rule  
Published: 10/15/2021  
Effective: 11/23/2021

No. 54001 (Amendment) R156-37f: Controlled Substance Database Act Rule  
Published: 11/01/2021  
Effective: 12/09/2021

No. 53994 (Amendment) R156-71: Naturopathic Physician Practice Act Rule  
Published: 10/15/2021  
Effective: 11/23/2021

### Education

#### Administration

No. 54024 (Amendment) R277-318: Teacher Salary Supplement Program  
Published: 11/01/2021  
Effective: 12/09/2021

No. 54025 (Amendment) R277-421: Out-of-State Tuition Reimbursement  
Published: 11/01/2021  
Effective: 12/09/2021

No. 54026 (Repeal) R277-502: Educator Licensing and Data Retention  
Published: 11/01/2021  
Effective: 12/09/2021

## NOTICES OF RULE EFFECTIVE DATES

No. 54027 (Amendment) R277-746: Driver Education Programs for Utah Schools  
Published: 11/01/2021  
Effective: 12/09/2021

No. 54028 (Amendment) R277-922: Digital Teaching and Learning Grant Program  
Published: 11/01/2021  
Effective: 12/09/2021

### Environmental Quality

#### Air Quality

No. 53891 (Repeal) R307-121: General Requirements: Clean Air and Efficient Vehicle Tax Credit  
Published: 09/15/2021  
Effective: 12/02/2021

Waste Management and Radiation Control, Radiation  
No. 53919 (Amendment) R313-16-290: Inspection of Radiation Machines and Facilities  
Published: 10/01/2021  
Effective: 12/13/2021

Waste Management and Radiation Control, Waste Management  
No. 53912 (Amendment) R315-260-10: Definitions  
Published: 10/01/2021  
Effective: 12/13/2021

No. 53913 (Amendment) R315-261-9: Requirements for Universal Waste  
Published: 10/01/2021  
Effective: 12/13/2021

No. 53914 (Amendment) R315-264-1: General - Purpose, Scope and Applicability  
Published: 10/01/2021  
Effective: 12/13/2021

No. 53915 (Amendment) R315-265: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities  
Published: 10/01/2021  
Effective: 12/09/2021

No. 53916 (Amendment) R315-268-1: Land Disposal Restrictions - Purpose, Scope, and Applicability  
Published: 10/01/2021  
Effective: 12/13/2021

No. 53917 (Amendment) R315-270-1: Hazardous Waste Permit Program -- Purpose and Scope of These Rules  
Published: 10/01/2021  
Effective: 12/13/2021

No. 53918 (Amendment) R315-273: Standards for Universal Waste Management  
Published: 10/01/2021  
Effective: 12/09/2021

### Government Operations

#### Fleet Operations

No. 53956 (Amendment) R27-1: Definitions  
Published: 10/15/2021  
Effective: 11/25/2021

No. 53957 (Amendment) R27-2: Fleet Operations Adjudicative Proceedings  
Published: 10/15/2021  
Effective: 11/25/2021

No. 53958 (Amendment) R27-3: Vehicle Use Standards  
Published: 10/15/2021  
Effective: 11/25/2021

### Governor

#### Economic Opportunity

No. 53996 (Amendment) R357-13: Hotel Convention Center Incentive  
Published: 10/15/2021  
Effective: 11/22/2021

No. 53997 (Amendment) R357-15: Enterprise Zone Tax Credit  
Published: 10/15/2021  
Effective: 11/22/2021

No. 53991 (Repeal) R357-17: Air Quality Incentive  
Published: 10/15/2021  
Effective: 11/22/2021

### Health

#### Disease Control and Prevention, Environmental Services

No. 53643 (New Rule) R392-106: Microenterprise Home Kitchen Sanitation  
Published: 07/15/2021  
Effective: 11/16/2021

No. 53643 (Change in Proposed Rule) R392-106: Microenterprise Home Kitchen Sanitation  
Published: 10/01/2021  
Effective: 11/16/2021

#### Health Care Financing, Coverage and Reimbursement Policy

No. 53952 (Amendment) R414-1: Services Available  
Published: 10/01/2021  
Effective: 11/15/2021

No. 53953 (Amendment) R414-10: Physician Services  
Published: 10/01/2021  
Effective: 11/15/2021

No. 53954 (Amendment) R414-200: Services Available  
Published: 10/01/2021  
Effective: 11/15/2021

Human ServicesRecovery Services

No. 54004 (Repeal) R527-302: Income Withholding Fees  
Published: 11/01/2021  
Effective: 12/09/2021

No. 54005 (Amendment) R527-378: Withholding of Social Security Benefits  
Published: 11/01/2021  
Effective: 12/09/2021

No. 54016 (Repeal) R527-928: Lost Checks  
Published: 11/01/2021  
Effective: 12/09/2021

Services for People with Disabilities

No. 53937 (Amendment) R539-10: Short-Term Limited Waiting List Services  
Published: 10/01/2021  
Effective: 12/07/2021

InsuranceAdministration

No. 53998 (Amendment) R590-79: Life Insurance Disclosure Rule  
Published: 11/01/2021  
Effective: 12/09/2021

No. 53999 (Amendment) R590-83: Unfair Discrimination on the Basis of Gender or Marital Status  
Published: 11/01/2021  
Effective: 12/09/2021

No. 53986 (Amendment) R590-122: Permissible Arbitration Provisions  
Published: 10/15/2021  
Effective: 11/22/2021

No. 53988 (Repeal and Reenact) R590-128: Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)  
Published: 10/15/2021  
Effective: 11/22/2021

No. 54018 (Amendment) R590-140: Reference Filings of Rate Service Organization Prospective Loss Costs  
Published: 11/01/2021  
Effective: 12/09/2021

No. 53987 (Amendment) R590-144: Commercial Aviation Insurance Exemption From Rate and Form Filing  
Published: 10/15/2021  
Effective: 11/22/2021

No. 54000 (Amendment) R590-161: Income Replacement Insurance Policy Disclosure  
Published: 11/01/2021  
Effective: 12/09/2021

Public SafetyDriver License

No. 54012 (Repeal and Reenact) R708-2: Commercial Driver Training Schools  
Published: 11/01/2021  
Effective: 12/09/2021

No. 53990 (Amendment) R708-45: Renewal or Duplicate License for Utah Residents Temporarily Residing Out of State  
Published: 10/15/2021  
Effective: 11/22/2021

Criminal Investigations and Technical Services, Criminal Identification

No. 54003 (Amendment) R722-300: Conceal Firearm Permit and Instructor Rule  
Published: 11/01/2021  
Effective: 12/09/2021

Tax CommissionAdministration

No. 53926 (Amendment) R861-1A-9: State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006  
Published: 10/01/2021  
Effective: 01/01/2022

Auditing

No. 53924 (Amendment) R865-20T-15: Calculation of Tax on Alternative Nicotine Products Pursuant to Utah Code Ann. Section 59-14-804  
Published: 10/01/2021  
Effective: 11/15/2021

No. 53925 (Amendment) R865-7H-1: Environmental Assurance Fee for Retailers or Consumers Not Participating in the Environmental Assurance Program Pursuant to Utah Code Ann. Section 19-6-410.5  
Published: 10/01/2021  
Effective: 11/15/2021

Motor Vehicle

No. 53923 (Amendment) R873-22M-2: Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108  
Published: 10/01/2021  
Effective: 11/15/2021

Property Tax

No. 53920 (Amendment) R884-24P-33: 2021 Personal Property Valuation Guides and Schedules  
Published: 10/01/2021  
Effective: 11/15/2021

No. 53921 (Amendment) R884-24P-37: Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305  
Published: 10/01/2021  
Effective: 01/01/2022

NOTICES OF RULE EFFECTIVE DATES

No. 53922 (Amendment) R884-24P-5: Abatement or  
Deferral of Property Taxes of Indigent Persons Pursuant to  
Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and  
59-2-1202(5)  
Published: 10/01/2021  
Effective: 01/01/2022

No. 53995 (Amendment) R884-24P-53: 2021 Valuation  
Guides for Valuation of Land Subject to the Farmland  
Assessment Act Pursuant to Utah Code Ann. Section 59-2-  
515.  
Published: 10/15/2021  
Effective: 12/09/2021

**End of the Notices of Rule Effective Dates Section**